IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT

League of Women Voters of Tennessee, et al.
Plaintiffs

Vs.
Julie Mix McPeak, Commissioner of Commerce and Insurance, et al.,
Defendants

No. 13-1365-IV

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

Pursuant to Rule 65, Tennessee Rules of Civil Procedure, the Plaintiffs move the Court to temporarily restrain the Defendants Commissioner Julie Mix McPeak, the Tennessee Department of Commerce and Insurance and the Attorney General and Reporter of the State of Tennessee from enforcing Tennessee Department of Commerce and Insurance Emergency Rules Chapter 0780-01-55 pending a hearing on the Plaintiffs' motion for a temporary injunction.

Plaintiffs further move the Court to temporarily enjoin the Defendants' enforcement of said Emergency Rules pending disposition of this case.

Plaintiffs request that an injunction bond be waived.

As grounds for this motion, Plaintiffs rely upon the allegations in their verified complaint, and on the legal claims stated therein, and elaborated in their supporting memorandum.

This 27th day of September, 2013.

Respectfully submitted,

Christopher E. Coleman TN BPR 24950
Michele Johnson TN BPR 16756
Kristin Ware TN BPR 29444
TENNESSEE JUSTICE CENTER
301 Charlotte Avenue
Nashville, Tennessee 37201
Phone: (615) 255-0331
Fax: (615) 255-0354
ccoleman@tnjustice.org
mjohnson@tnjustice.org
kware@tnjustice.org

Michael G. Abelow (No. 26710)
SHERRARD & ROE, PLC
150 Third Avenue South, Suite 1100
Nashville, TN 37201
Phone: (615) 742-4532
Fax: (615) 742-4539
mabelow@sherrardroe.com

Counsel for the Plaintiffs

Certificate of Counsel

I hereby certify that my co-counsel, Michael Abelow, telephoned Mr. William Young, Solicitor General for the State of Tennessee and they spoke by phone at approximately 11:30 a.m. on September 27, 2013. Mr. Abelow informed Mr. Young that we would be filing this case this afternoon, as soon as the documents were prepared and verified by the plaintiffs. He described the case and informed Mr. Young that we would be seeking immediate injunctive relief.

I sent a copy of this motion, along with a copy of the verified complaint and proposed temporary restraining order by email to Ms. Sarah Hiestand, Office of the Attorney General and Reporter, by email at 3:25 p.m. I called Ms. Histand at the same time to inform her that we were filing the case, with this motion, no later than 4:00 p.m. today.

Dated this 27th day of September, 2013 at 3:30 pm.

Chris Cola

Christopher Coleman

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

LEAGUE OF WOMEN VOTERS OF TENNESSEE; ALLISON CAVOPOL; CAROL COPPINGER, on her own behalf and as next friend of SAMUEL SHIRLEY; REVEREND JERRY CRISP; TOM JOHN, M.D.; TERRELL McDANIEL, Ph.D.; BRIAN PADDOCK; RANDALL RICE; MERYL RICE; and REVEREND JAMES THOMAS, Plaintiffs	)	COPY
vs.	)	No. 13-1365-IV
JULIE MIX McPEAK, Tennessee Commissioner of Commerce and Insurance; TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE; and ROBERT E. COOPER, JR., Tennessee Attorney General And Reporter, Defendants	)	Part IV

COMPLAINT

SUMMARY OF ISSUES

1. This complaint seeks a declaratory judgment that emergency rules ("Emergency Rules") issued by the defendant Tennessee Department of Commerce and Insurance (DCI) are void because they conflict with the Tennessee and United States Constitutions, as well as with federal law and regulations.
2. The Emergency Rules purport to regulate the activities of "navigators" who are designated by federal officials to help implement the Patient Protection and Affordable Care Act ("the Affordable Care Act" or "ACA"), commonly referred to as "Obamacare."

3. The Emergency Rules regulate a host of private individuals and organizations beyond those who are federally designated as navigators, however. The Emergency Rules also require fingerprinting, criminal background checks, and registration with DCI before anyone can engage in any of a broad array of constitutionally protected activities. Those activities include "facilitating enrollment" in health plans offered under the ACA, "public education" about the insurance coverage and tax credits available under the ACA, and "consumer assistance" to those seeking benefits.

4. The Emergency Rules prohibit the "discuss[ion of] the benefits, terms or features" of any health plan offered under the ACA, or the offering of advice about which plans may be most suitable for an individual—exactly the sort of assistance that federal regulations require navigators to provide and encourage other volunteers to offer.

5. As broad as the Emergency Rules are, their boundaries are unknown and unknowable, moreover, because they also apply to all persons, other than insurance producers, who "*could reasonably be described* or designated as, navigators, 'non-Navigator assistance personnel' or 'in-person assistance personnel,' application assisters or application counselors including certified application counselors."

6. Plaintiffs are individuals whose exercise of their professional responsibilities or First Amendment rights subjects them to the Emergency Rules and its penalties. In bringing this action, Plaintiffs invoke this Court's constitutional authority to grant relief through the writ of certiorari, as well as declaratory and injunctive relief pursuant to 42 U.S.C. § 1983.

7. The Court should grant Plaintiffs relief for three main reasons:

   - First, the Emergency Rules violate state law. The authorizing legislation, Chapter 377, violates the Tennessee Constitution because it is broader than its bill caption, and because it violates the separation of powers by authorizing the Executive Branch to regulate the

practice of law. The Emergency Rules were also promulgated through defective procedures.

- Second, the Emergency Rules are unconstitutionally vague and overbroad. They require myriad individuals who receive no public funds and have no connection to the federal navigator program -- and want no connection to the federal navigator program -- to register with the state and obtain the defendant Commissioner's certification before they can engage in protected First Amendment activities. The Emergency Rules also categorically prohibit some protected speech.

- Third, the Emergency Rules are preempted because they conflict with federal law. They impede implementation of the ACA by preventing individuals from being able to obtain federally funded and authorized consumer assistance and information.

PARTIES

A. Plaintiffs

8. The League of Women Voters of Tennessee is incorporated in Tennessee as a non-profit educational corporation and as a separate non-profit member organization.

9. Allison Cavopol is an adult resident of Nashville, Davidson County, Tennessee. She is the Executive Director of the International English Institute in Nashville.

10. Carol Coppinger is an adult resident of Whitwell, Marion County, Tennessee. She is the mother of Samuel Shirley.

11. Samuel Shirley is a 20-year old resident of Whitwell, Marion County, Tennessee. He brings this action through his mother, Carol Coppinger, acting as his next friend.

12. Reverend Jerry Crisp is an adult resident of Whiteville, Hardeman County, Tennessee. He is the pastor of Union Hill Church in Whiteville.

13. Tom Johns, M.D., is an adult resident of Davidson County. He is a board certified rheumatologist who is retired from full-time medical practice.

14. Terrell McDaniel is an adult resident of Hendersonville, Sumner County, Tennessee. He is a licensed clinical psychologist and maintains his practice in Hendersonville.

15. Brian Paddock is an adult resident of Cookeville, Putnam County, Tennessee. He is a licensed attorney.

16. Randall Rice is an adult resident of Hardeman County, Tennessee. He is a retiree and community volunteer.

17. Meryl Rice is an adult resident of Hardeman County, Tennessee. She is a retired licensed clinical social worker who volunteers her time to assist people with mental disabilities.

18. Reverend James Thomas is an adult resident of Nashville, Davidson County, Tennessee. He is the pastor of Jefferson Street Missionary Baptist Church in Nashville.

B. Defendants

19. Julie Mix McPeak is the Tennessee Commissioner of Commerce and Insurance. Pursuant to T.C.A. §§ 4-5-1302, the Tennessee Department of Commerce and Insurance is under her general charge and direction. She is authorized by T.C.A. § 56-2-301 to promulgate rules and regulations that have the force of law. Chapter 377, Public Acts of 2013 ("Chapter 377") authorizes the defendant Commissioner to issue rules regulating navigators in the implementation of the Affordable Care Act.

20. The Tennessee Department of Commerce and Insurance is created by T.C.A. § 4-3-1301 as a department of the Executive Branch.

21. Robert E. Cooper, Jr., is the Tennessee Attorney General and Reporter pursuant to Article VI, Section 5 of the Tennessee Constitution. He is named as a defendant in this action pursuant to T.C.A. § 29-14-107(b) and Rule 24.04, Tennessee Rules of Civil Procedure.

JURISDICTION AND VENUE

22. This court has jurisdiction to grant declaratory and injunctive relief pursuant to T.C.A. §§ 29-14-102 and 4-5-225, and 42 U.S.C. § 1983. Venue in this action against defendant state officials lies properly in this court.

FACTS

C. The Affordable Care Act

23. The Affordable Care Act (ACA) was approved by Congress and signed into law in 2010. Pub. L. 111-148. The ACA is a comprehensive law that seeks to reform health care insurance and delivery in the United States by extending health coverage to most uninsured Americans, and by controlling the cost of health care and improving its quality. *National Federation of Business v. Sebelius*, 132 S. Ct. 2566 (2012).

24. Among other things, the ACA calls for the establishment of two online health insurance exchanges in each state, effective October 1, 2013.

25. One of the exchanges is for the sale of individual insurance policies and is known as the Health Insurance Marketplace (Marketplace).

26. The other exchange is for the sale of group employee health insurance to small businesses and is known as the Small Business Health Options Program, or "SHOP" exchange.

27. If a state declines to administer the exchanges, responsibility for their management devolves to the federal Department of Health and Human Services (HHS).

28. Tennessee has notified HHS that it will not administer the exchanges within this state. The Tennessee Marketplace and SHOP exchange will therefore be federally administered.

29. Individuals under age 65 who do not otherwise have access to minimum essential health coverage at an affordable price can apply for coverage in the online Marketplace.

30. The Marketplace will first assess applicants for potential eligibility for the Medicaid program, known as "TennCare" in Tennessee, and for Tennessee's Children's Health Insurance Program ("CHIP"), known as CoverKids.

31. If ineligible for those programs, families with incomes between 100% and 400% of the federal poverty level (approximately $23,000 to $92,000 for a family of four) can obtain premium tax credits, calculated on a sliding scale, to make the cost of health coverage affordable.

32. Each state's marketplace will offer an array of commercial health insurance products, known as qualified health plans ("QHPs") approved by the state insurance regulatory agency. In Tennessee, the agency that approves QHPs to offer coverage in the Marketplace is the defendant Department of Commerce and Insurance.

33. The QHPs are grouped by so-called "metal tiers", *i.e.,* bronze, silver, gold and platinum, in terms of their ascending value and price.

34. The QHPs within a given tier compete on the basis of quality and by offering different combinations of benefits and cost-sharing. In order to receive the premium tax credit for which she qualifies, an individual must apply through the Marketplace. She must choose a metal tier and then select the specific QHP within that tier that best serves her family's needs.

35. For those who file successful, timely applications and pay premiums as required, QHP coverage will take effect January 1, 2014.

D. The role and federal regulation of Navigators under the ACA

36. The process of applying for health coverage and premium tax credits, and selecting a QHP that best meets a family's needs, is complex. The process is especially challenging for individuals with limited prior experience with health insurance.

37. In order to assist the uninsured to understand what health benefits they can qualify for, and to help them enroll in a QHP through the Marketplace, the ACA provides for the selection, training and oversight of so-called "navigators." Navigators are employed with federal funding granted to local companies and non-profit agencies in each state. 42 U.S.C. § 18031(i). (Please see relevant excerpts of the federal statute compiled in Appendix 1.)

38. Navigators' duties include outreach and raising public awareness of the availability of health coverage through the Marketplace. 42 U.S.C. § 18031(i)(3); 45 C.F.R. § 155.210(e). (Please see relevant federal regulations compiled in Appendix 2.)

39. Navigators undergo federal training and testing to qualify them to provide one-on-one individual assistance to consumers "about the full range of QHP options and insurance affordability programs for which they are eligible," and to enable them to "facilitate selection of a QHP." 45 C.F.R. §§ 155.210(e)(3) and 155.215(a)(1)(iii).

40. Navigators must comply with rigorous federal patient privacy and security laws and regulations. 45 C.F.R. §§ 155.210(b)(2)(iv) and 155.260.

41. Navigators are monitored by the Marketplace to ensure that the assistance they provide is fair, accurate and impartial. 42 U.S.C. § 18031(i)(4); 45 C.F.R. §§ 155.210 and 155.215(b) and (e).

42. The statute prohibits navigators from having any conflicts of interest and from charging for their services. 45 C.F.R. § 155.210.

43. Federal laws and regulations do not preempt "any State law that does not prevent the application of the provisions of Title I of the Affordable Care Act." 42 U.S.C. § 18031(k); 45 C.F.R. § 155.120.

E. The role and federal regulation of certified application counselors

44. Federal regulations also provide for consumer assistance by another category of trained personnel known as "certified application counselors" (CACs). 45 C.F.R. § 155.225.

45. CACs are supervised by sponsoring organizations approved by HHS. 45 C.F.R. § 155.225(b)

46. Unlike navigators, CACs receive no funding from the Marketplace; they may be employees or volunteers of the sponsoring organization. Like navigators, they must undergo federal training and pass a test in order to gain federal certification. 45 C.F.R. § 155.225(d). CACs must disclose to the Marketplace, to their sponsoring organization and to consumers any potential conflicts of interest, and they must comply with rigorous patient privacy and security requirements. 45 C.F.R. §§ 155.225(d)(1)-(3) and 155.260.

47. CACs' are certified to:

    a. provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible;

    b. assist individuals and employees to apply for coverage in a QHP through the Marketplace and for insurance affordability programs; and,

    c. help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs.

45 C.F.R. § 155.225(c). In performing all of these duties, CACs must "act in the best interest of the applicants assisted." 45 C.F.R. § 155.225(d)(4).

F. The Challenged Legislation: P.A. 2013, Chapter 377

48. During the 2013 Session of the Tennessee General Assembly, legislation was introduced that was designated as Senate Bill 1145 and House Bill 881 (SB 1145/HB 881).

49. The title, or caption, described the bill as follows:

> AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, relative to the regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges.

(Please see Appendix 3)

50. As filed, SB 1145/HB 881'sdefinition of "navigator" fell squarely within the bill's title, defining "navigator" to mean "a person selected to perform the activities and duties identified in Section 1311(i) of the federal Affordable Care Act."

51. During the course of the legislative session, SB 1145/HB 881 was substantially amended, and the definition of "navigator" was revised.

52. As thus amended, the bill was signed into law on May 14, 2013 as Chapter 377 of the Public Acts of 2013. Chapter 377 took effect July 1, 2013. (Please see Appendix 4.)

53. Chapter 377 now defines "navigator" not just as a person who "receives any funding, directly or indirectly, from an exchange, this state or the federal government to perform any of the activities and duties identified in 42 U.S.C. § 18031."

54. Section 1 of Chapter 377 now also defines the term "navigator" to include "any person, other than an insurance producer, who:

(A) . . .

(B) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;

(C) Conducts public education or consumer assistance activities for, or on behalf of, an exchange; *or*

(D) Is described or designated by an exchange, this state or the United States department of health and human services, or could reasonably be described or designated as, a navigator, an in-person assister, enrollment assister, application assister or application counselor.

(italics added)

55. Chapter 377 authorizes the defendant Commissioner to "promulgate such rules and regulations as may be necessary or appropriate to regulate the activities of navigators as may be consistent with the Patient Protection and Affordable Care Act."

G. The Challenged Emergency Rules: Chapter 0780-01-55

1. Individuals and organizations covered by the Emergency Rules

56. On September 18, 2013, the defendant Commissioner promulgated emergency rules ("Emergency Rules") under the purported authority of T.C.A. § 4-5-208 and Chapter 377. The Emergency Rules create a new regulatory chapter, Chapter 0780-01-55. (Please see Appendix 5.)

57. The Emergency Rules took effect the day they were promulgated and are to remain in effect for 180 days, until March 17, 2014, pursuant to T.C.A. § 4-5-208(b).

58. The defendant Commissioner declared in the Emergency Rules that "[t]he activities and duties of navigators and certified application counselors shall be deemed to constitute transacting the business of insurance." Rule 0780-01-55-.09.

59. Nevertheless, the Commissioner issued the Emergency Rules without first holding a public hearing on the rules after having given 30 days' prior notice. Such notice and hearing are required by T.C.A. § 56-1-701 before the promulgation or amendment of any "rules and regulations relating to the business of … health insurance."

60. The Emergency Rules define a "navigator," in addition to someone who is designated and funded as such by the federal government, as "any individual or entity, other than an insurance producer, who:

> (a) ...
>
> (b) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;
>
> (c) Conducts public education or consumer assistance activities for, or on behalf of, an exchange; *or*
>
> (d) Is described or designated by an exchange, the state, or the United States Department of Health and Human Services, or could reasonably be described or designated as, navigators, *"non-Navigator assistance personnel"* or "in-person assistance personnel", application assisters or application counselors including certified application counselors."

Rule 0780-01-55-.02(6)(d)(italics added).

61. The Emergency Rules thus track the definition in Chapter 377, with the important addition of the phrase, "non-Navigator assistance personnel."

62. The Emergency Rules' definition of "navigator" includes "certified application counselors" (CACs), who are further defined to mean:

> any employee or volunteer of a certified application counselor organization that enters into an agreement with the exchange to have its employees or volunteers:
>
> (a) Provide information to individuals and employees about the full range of qualified health plan options and insurance affordability programs for which they are eligible;
>
> (b) Assist individuals and employees to apply for coverage in a qualified health plan through the exchange and for insurance affordability programs; and
>
> (c) Help to facilitate enrollment.

Rule 0780-01-55-.02(3).

63. The Emergency Rules apply to organizations, as well as to persons. "Person" is defined to include "any natural or artificial person including, but not limited to, an individual, partnership, association trust or corporation." Rule 0780-01-55-.02(7). A "certified application counselor organization" ("CAC organization") includes any organization "designated by the exchange to certify its staff members or volunteers to act as certified application counselors." Rule 0780-01-55-.02(4).

64. The Emergency Rules exempt only insurance producers from the broad definitions quoted above.

65. No distinction is made between individuals or organizations that receive federal funding and unpaid volunteers that are providing outreach and enrollment assistance *gratis*.

66. The Emergency Rules contain no exceptions for:

- family members speaking to or assisting their loved ones;
- individuals conversing socially with friends;
- clergy assisting their congregants;
- charities providing information and referral services;
- civic organizations or news media informing the public;
- teachers engaged in educational activities;
- lawyers or accountants advising their clients;
- librarians providing public information to library patrons; or
- clinicians counseling their patients.

2. Requirements and prohibitions established by the Emergency Rules

67. The Emergency Rules provide that no person or organization may take any action that would bring it within the expansive definitions quoted above without first registering with the defendant Commissioner and submitting to her regulatory oversight. Rule 0780-01-55-.03.

68. A person shall not be allowed to register, or to engage any of the acts that require registration, until he satisfies the defendant Commissioner that he, among other things,

    a. is at least eighteen years of age [Rule 0780-01-550-.04(a)];

    b. maintains his principal place of business in the state [Rule 0780-01-550-.04(b)];

    c. has successfully passed the applicable federal training program for navigators or certified application counselors [Rule 0780-01-550-.04(e)];

    d. submits a complete set of fingerprints and undergoes a criminal background check [Rule 0780-01-550-.04(f)];

    e. "possesses the requisite character and integrity" [Rule 0780-01-550-.04(h)]; and

    f. identifies "the entity with which [he] is affiliated and supervised."[Rule 0780-01-550-.04(i)]

69. An organization shall not be allowed to register, or to engage in any of the acts that require registration, until the organization has registered with the defendant Commissioner and reported to the Commissioner the names of all individual "navigators" (as broadly defined by the Emergency Rules) that it employs, supervises or is affiliated with. The organization must update the list of names on a quarterly basis. Rule 0780-01-550-.04(2)-(6).

70. The Emergency Rules provide that the defendant Commissioner:

> may examine and investigate the business affairs and records of any registrant, or any person required to be registered, to determine whether the individual or entity has engaged or is engaging in any violation of this chapter or applicable insurance law."

Rule 0780-01-550-.07(4).

71. The Emergency Rules prohibit a navigator, as defined by the Rules, or certified application counselor from, among other things:

> Discuss[ing] the benefits, terms, and features of a particular health plan over any other health plans and offer[ing] advice about which health plan is better or worse or suitable for a particular individual or employer

Rule 0780-01-550-.06(b).

72. This prohibition directly conflicts with federal regulations that require federally designated navigators and CACs to "provide information to consumers about the full range of [qualified health plan] options and insurance affordability programs for which they are eligible." 45 C.F.R. §§ 155.215(a)(2)(iv) and 155.225(c)(3).

73. CACs are specifically directed by federal regulations to "act in the best interest of the applicants and enrollees assisted," which requires them to provide the sort of advice and assistance that the Emergency Rules prohibit. 45 C.F.R. § 155.255(d)(4).

3. Penalties imposed by the Emergency Rules

74. The Emergency Rules authorize the defendant Commissioner to impose a fine of $1,000 for each violation of the Rules, including the registration requirements. Rule 0780-01-550-.07(b).

4. Post-promulgation actions by the Defendants

75. Since promulgating the Emergency Rules on September 18, 2013, the defendant Commissioner and DCI have attempted to clarify the Emergency Rules and limit their scope. DCI has posted on its website two sets of "frequently asked questions" ("FAQs").

76. On September 24, 2013, following adverse media coverage of the Emergency Rules, a DCI spokesperson was quoted on WPLN, a Nashville public radio station, as acknowledging that the time required to meet the Emergency Rules' registration requirements would make it impossible for navigators and CACs to be in compliance until after their October 1, 2013 deadline for assisting consumers. The WPLN report quoted the spokesperson as stating that DCI would therefore delay enforcement of the fingerprinting requirements of the Emergency Rules, but would eventually require compliance at an unspecified future date. (Please see copies of the FAQs and media report compiled in Appendix 6.)

77. Neither the FAQs nor DCI's media pronouncements, even if quoted accurately, have any legal effect and cannot alter the Emergency Rules, which remain in effect. However, those pronouncements do attest to the Rules' overbreadth and vagueness. DCI's statements only compound the public's uncertainty about what speech or activities will run afoul of the Emergency Rules, and about who is at risk of being penalized for their violation.

78. DCI has posted on its website an application for organizations to use in order to register as certified application counselor organizations. (Please see Appendix 7.)

79. DCI has posted on its website an application for individuals to use in order to register as certified application counselors. (Please see Appendix 8.)

The Impact of Chapter 377 and the Emergency Rules on the Plaintiffs

1. League of Women Voters of Tennessee

80. The League of Women Voters of Tennessee is an affiliate of the national organization, The League of Women Voters.

81. Rooted in the movement that secured the right to vote for women, the League has worked to foster civic engagement and enhance access to vote since we were founded in 1920. The Tennessee League of Women Voters is a nonpartisan political organization encouraging informed and active participation in government. It influences public policy through education and advocacy.

82. The League of Women Voters of Tennessee has been involved in ongoing public education concerning the ACA and the health affordability programs that will be available through the exchanges. More specifically, the League of Tennessee has volunteers that travel to various parts of the state in order to help residents understand basic information that will help them enroll in the Marketplace. These conversations include information about how to count income, how to register for the Marketplace online, and what plans might best suit a person's needs. Volunteers are concerned that as a result of these conversations and information sessions, they could "reasonably [be] described as … an enrollment assister or application assister," and thus are already subject to investigation and penalty under the Emergency Rules.

83. Starting October 1, 2013, volunteers with the League of Women Voters of Tennessee had planned to guide uninsured residents who need assistance in enrolling on the Marketplace and to take them step-by-step through the process. Many residents in rural areas do not have home computers, and so they also need help with logging into the system and typing up their information. The Emergency Rules will preclude League and its volunteers from providing this assistance.

2. Allison Cavopol

84. Plaintiff Allison Cavopol manages the International English Institute ("IEI"), a school that provides English language instruction to international students. IEI is a small business with less than 15 full-time employees. IEI currently provides group health coverage for its employees.

85. Ms. Cavopol currently purchases her own coverage outside of IEI's group policy. She has an individual health insurance policy that she has carried for 20 years

86. With the ACA's establishment of new health insurance affordability programs, Ms. Cavopol needs to evaluate whether she can obtain coverage for herself through the Marketplace that would better suit her personal needs than the coverage she now buys. As IEI's executive director, she needs to evaluate whether IEI can obtain coverage on the SHOP exchange that would better suit IEI's needs and those of its employees. She also needs to evaluate whether IEI employees would be better served if IEI stopped providing group coverage and left each employee to apply for a premium tax credit through the Marketplace, where each could choose a QHP best suited to his or her individual needs.

87. In evaluating these coverage options and advising her employees, Ms. Cavopol prefers to get advice from a person who has no financial interest in selling her, her company, or her employees health insurance. Federal regulations require navigators to be free of financial conflicts and to provide information that is "fair, accurate and impartial." Federal regulations require CACs to disclose any potential conflicts of interest and to advise consumers about all available health coverage options, acting in the consumers' best interest. Ms. Cavopol therefore prefers to obtain information and advice from a federally certified navigator or CAC. But, because Emergency Rule 0780-01-55-.06(1)(b) bars everyone else from

discussing with her "the benefits, terms, and features of a particular health plan over any other health plans and [from] offer[ing] advice about which health plan is better or worse or more suitable for a particular individual or employer," the Emergency Rules prevent her from discussing such matters with anyone other than insurance producers, who have a financial interest in selling insurance. Ms. Cavopol has contacted IEI's current insurance broker, but the broker did not have the specific information she needs about plan options or how the new law will affect IEI and its employees.

88. Ms. Cavopol is not a navigator or CAC, and she has neither the time nor the interest in becoming one. As an employer, she only wants to ensure that IEI's employees have accurate information about the health insurance options available to them through the Marketplace or the SHOP exchange. She fears that, though, that if she gives them that information herself or even refers them to another resource, she might thereby "facilitate" their enrollment" or could "reasonably be described" as being "non-Navigator assistance personnel", an "enrollment assister", an "application assister," or an "application assister." The Emergency Rules therefore restrict her ability to provide even basic information to her employees that they will need in order to obtain health benefits or tax credits for which they qualify under the ACA.

3. Carol Coppinger

89. Plaintiff Carol Coppinger is responsible as the mother of Samuel Shirley for managing his health care and maintaining his health insurance coverage. Although he is an adult, Samuel's mental disabilities make it impossible for him to apply on his own behalf for insurance affordability programs for which he qualifies. He is incapable of enrolling in such programs or complying with any of the requirements that must be met on an ongoing basis in order to

maintain his coverage. Since he was a small child, Ms. Coppinger has regularly submitted all applications and supporting documents needed to maintain his coverage through Tennessee's Medicaid program, known as TennCare.

90. Beginning on October 1, 2013, TennCare will become one of the state health subsidy programs available through the Marketplace.

91. Ms. Coppinger will no longer be able to facilitate her son's continuing enrollment in TennCare without first identifying a CAC organization that will agree to supervise her, taking a five hour federal CAC course and passing a test to obtain federal certification, submitting a complete set of fingerprints to the state and undergoing a criminal background check, and satisfying the defendant Commissioner that she possesses the requisite character and integrity.

92. Ms. Coppinger cannot take the federal CAC course online at home, because she has no computer and no internet access. It would be very difficult for her to take the course outside of her home, even assuming she could find someone willing to give her internet access for that purpose. Ms. Coppinger was severely injured in a 1995 automobile accident, and the resulting physical disabilities make it impossible for her to sit for the extended period required to take the federal CAC course and the federal qualifying test.

93. Nor can Ms. Coppinger assist anyone else in enrolling her son. She fears that by, for example, providing necessary information or documentation to a registered navigator or CAC, she might be "reasonably described as … an enrollment assister or application assister."

94. Ms. Coppinger cannot ask a navigator or CAC for information regarding the benefits, terms, and features of a particular health plan or seek their advice about which health plan is better

or worse or suitable for her or her family, as contemplated by the federal law, because the Emergency Rules prohibit navigators and CACs from having such discussions or providing such advice.

4. Samuel Shirley

95. Chapter 377 and the Emergency Rules have the effect of depriving plaintiff Samuel Shirley of the assistance he needs, and to which he is entitled under the ACA. As described above, Chapter 377 and the Emergency Rules restrict his mother's ability to assist him in maintaining his TennCare coverage or obtaining other health benefits for which he may be eligible. The Emergency Rules constrain her from assisting someone else to apply on his behalf, and she is the only person who has the information needed to document and maintain his eligibility.

5. Reverend Jerry Crisp

96. Plaintiff Jerry Crisp is the pastor of the Union Hill Church in Whiteville, Tennessee. Many of the 450 members of his congregation are uninsured, as are some 4,500 residents of Hardeman County, where the church is located. As a minister in his community for 30 years, Reverend Crisp often encounters the devastation to families' health and well-being, as well as to their financial security, that results from a lack of health insurance. For Reverend Crisp and his church, aiding the sick is a moral imperative and religious duty.

97. When Reverend Crisp learned that enrollment in qualified health plans through the Marketplace would begin on October 1, 2013, his church immediately volunteered its resources to assist people with enrolling through the Marketplace. The church offered to lend the use of its computer lab to the community – church members and non-church members alike – for individuals who otherwise lack internet access or computer skills.

98. Church members have volunteered to provide outreach to the community to ensure that people are aware of the health coverage and tax credits that will be available through the Marketplace. Reverend Crisp and his congregants intend to actively assist people to enroll who, due to limited literacy or disabilities, are unable to enroll themselves.

99. These activities are totally voluntary; neither the church nor its members have charged, or will charge, for providing these resources and assistance, which they view as a part of the church's ministry.

100. It is not feasible for the church and many of its members to register as navigators pursuant to the Emergency Rules and Reverend Crisp objects as a matter of religious and constitutional principle to being required to register.

101. Reverend Crisp fears that he, his congregants and the church itself face financial penalties that they can ill afford if they proceed with their planned activities without first registering. Even were they registered, they would be unable to complete the process until well after October 1, since they would first have to go through the federal certification process.

6. Tom John, M.D.

102. Tom Johns M.D., is a physician and Nashville resident. During 32 years of medical practice, he has seen firsthand the importance of health insurance coverage in improving quality and longevity of life. The peace of mind of being insured has made a critical difference in the patients he has seen who have suffered from chronic and debilitating illness.

103. During the course of his medical practice, patients have regularly asked Dr. John about health coverage. Due to the complexity of the issue, he would share what he knew and refer

the patients to nurses, social workers, or others who might be more knowledgeable. Dr. John found that most of his patients could not navigate the complexities of health insurance without assistance.

104. Dr. John now runs an organic farm in the Bells Bend community of Davidson County. Workers and volunteers on the farm seek his advice on health care decisions, including questions about health insurance coverage. Dr. John has gathered information on the implementation of the ACA and has shared his information and insights with those who have sought his advice.

105. As a physician and as an employer, he is concerned that the Emergency Rules will prevent him from sharing information or advising others about the availability of health coverage and how to select and enroll in a QHP. The Emergency Rules' restrictions on his discussing such matters interfere with his professional duty to provide to others the best and most comprehensive care possible.

7. Terrell McDaniel, Ph.D.

106. Dr. Terrell McDaniel is resident of Franklin, Williamson County, Tennessee. He is a licensed clinical psychologist and a partner in the mental health practice Hughes, McDaniel & Associates (Hughes McDaniel) in Hendersonville, Tennessee. Dr. McDaniel personally has 25-30 active patients at any time, and his practice sees hundreds of patients per month.

107. Dr. McDaniel's Ph.D. degree is in industrial/organizational psychology as well as clinical psychology, and he works part-time as a business consultant.

108. Many Hughes McDaniel patients have health insurance problems. Some lose coverage during the course of treatment, particularly during the course of divorces and other personal crises that often prompt patients to seek mental health care.

109. Dr. McDaniel knows from his professional experience that helping patients obtain and maintain health coverage is important for their overall well-being. For some patients, it is an essential part of treatment. Helping patients deal with complicated tasks like enrolling in insurance or completing tax-related tasks helps the patients reach their maximum level of functioning. For example, some patients have severe anxiety about computers and need assistance in helping them complete computer tasks as part of treatment.

110. Mr. McDaniel and his colleagues have also treated patients by helping them with their tax records. They do not provide specific tax advice or direction but help reduce their anxiety in engaging the patients and assisting them through these tasks.

111. Dr. McDaniel and his colleagues at Hughes McDaniel have considered completing the federal CAC training, so that they can continue to assist their patients with health insurance and tax matters that involve submitting applications through the Marketplace.

112. As a partner in a small business, Dr. McDaniel also wants and needs to be able to provide his employees information about health benefits available through the Marketplace or the SHOP exchange. He would like to be able to get the advice of an expert other than an insurance producer, because he wants objective information from a financially disinterested source.

113. Emergency Rules deter Dr. McDaniel and his colleagues from seeking CAC certification or assisting their patients because of the administrative burdens that the Emergency Rules impose and because of the fear of potential legal liability arising from the Rules.

8. Brian Paddock

114. Brian Paddock is a licensed attorney whose practice includes the exercise of his professional judgment in advising clients about taxes and state health subsidy programs, including TennCare.

115. Chapter 377 and the Emergency Rules preclude him from counseling clients on premium tax credits or health coverage options available through the Marketplace or SHOP exchange, because he is not registered with the defendant Commissioner as a navigator.

116. Even if he registered as a navigator, he would be barred by Emergency Rule 0780-01-55-.06(1)(b) from applying his legal judgment to the discussion of the benefits, terms, and features of a particular health plan over any other health plans, and he would still be prohibited from offering advice about which health plan is better or worse or suitable for a particular individual or employer.

117. Whether or not he is registered, the records of his legal practice are subject, under Emergency Rule 0780-01-55-.08, to being examined and investigated by the defendant Commissioner to determine whether he is engaging, or has engaged in, that or any other violation of the Emergency Rules.

118. Thus, the Emergency Rules place him in the position of either violating the Rules or withholding advice which his clients need in order to understand their rights and responsibilities.

119. By practicing in an area of the law related to state health subsidy programs available through the Marketplace or SHOP exchange, Mr. Paddock invites an investigation, pursuant to Emergency Rule 0780001-55-.07(4), that would violate the confidentiality of attorney-client communications.

9. Randall & Meryl Rice

120. Randall Rice and his wife, Meryl Rice, are retirees with a lifetime of experience as community volunteers. As a retired licensed clinical social worker who served people with mental illness, Ms. Rice knows from personal experience how important it is for families to have adequate health insurance. Because the community where they live is very poor, Mr. and Ms. Rice have many neighbors who cannot afford insurance. In addition, Ms. Rice has many former clients who, because of their preexisting mental illness, are uninsurable at any price.

121. As a retired employee of the International Association of Machinists and Aerospace workers, for whom bargaining for members' health insurance benefits was of crucial importance, Mr. Rice too, is also mindful of the importance of health insurance for workers and their families.

122. For several months, Mr. and Ms. Rice have studied the provisions of the ACA so that they can be a local resource in their community. They have worked with local ministers and

other community leaders to establish computer labs and organize volunteers to help uninsured families enroll as soon as the Marketplace begins operating on October 1, 2013.. This is important because many people in their rural community, especially those who are uninsured, lack access to high speed internet and lack computer skills.

123. Mr. and Ms. Rice have attempted unsuccessfully to become federally certified application counselors. In order to do so, they need to find a local CAC organization to serve as their sponsors. The only local organization with federal certification is a community clinic in Bolivar, Tennessee. When they contacted the clinic to ask if the clinic would sponsor them and other volunteers to obtain federal CAC certification, the clinic declined.

124. The clinic informed Mr. and Ms. Rice that, because of the Emergency Rules, the clinic fears it will incur legal liability if it sponsors volunteers to help with outreach and enrollment activities.

125. There is no practical way for Mr. and Ms. Rice to obtain federal certification, which is a prerequisite for state registration under the Emergency Rules. They fear that if they and the volunteers they have recruited continue with plans to help facilitate the enrollment of their uninsured neighbors, they will incur penalties under the Emergency Rules.

10. Reverend James Thomas

126. Reverend James Thomas is the pastor of Jefferson Street Missionary Baptist Church. During his decades-long ministry, Reverend Thomas has counseled many members of his church and of the larger Nashville community. Many of those whom he counsels have

serious health or mental health problems and has seen the important difference that health insurance makes in the health and well-being of families.

127. Reverend Thomas and his congregation have been preparing for months to assist uninsured neighbors to enroll in health coverage and obtain tax credits through the Marketplace when it begins operating on October 1, 2013. Reverend Thomas, through his membership in the Interdenominational Ministers Fellowship, has worked with the pastors of other Nashville churches to mobilize volunteers to conduct outreach and assist in the enrollment efforts.

128. On October 1, 2013, Reverend Thomas's church is hosting a city-wide kickoff celebration and enrollment drive to mark the opening of the Marketplace. Many members of his church will be present as volunteers and will have computers available. The volunteers will help walk uninsured applicants through the online enrollment process. Nashville Mayor Karl Dean and other elected officials and clergy leaders will participate in the event.

129. Reverend Thomas and his fellow pastors and congregants have already engaged in extensive public education and outreach promoting the October 1st event. They have announced that volunteer assistance will be available at the event to help people enroll.

130. For Reverend Thomas and the volunteers he has recruited to help with outreach and enrollment assistance, it is impossible to register with the state before the October 1st event as required by the Emergency Rules.

131. Reverend Thomas regards his and his church's outreach and enrollment activities, which are provided completely without charge, as part of his religious ministry and the church's mission. He objects as a matter of principle to having to register as required by the Emergency Rules. Reverend Thomas fears that the Emergency Rules subject him and others working with him on the October 1st event to serious legal liability

CAUSES OF ACTION

a. Violation of the Notice Provisions of the Insurance Code & the Tennessee Uniform Administrative Procedures Act

132. The Emergency Rules are void under T.C.A. §56-1-701 of the Insurance Code because the defendant commissioner promulgated the Rules without first giving thirty days' notice and holding a public hearing.

133. The Emergency Rules are void and of no effect under T.C.A. §4-5-216 because they were not adopted in compliance with the Tennessee Uniform Administrative Procedures Act.

134. The Commissioner's attempted reliance on T.C.A. §4-5-208 to promulgate the Emergency Rules is to no avail, because the Emergency Rules failed to comply with that statute. The defendant commissioner attempted to invoke T.C.A §4-5-208(a)(5) by asserting that Chapter 377 required the defendant Department to implement rules prior to October 1, 2013, and therefore precluded utilization of rulemaking procedures otherwise prescribed by the Uniform Administrative Procedures Act. However, Chapter 377 was signed into law on May 14, 2013, and took effect on July 1, 2013. That afforded the defendant Commissioner sufficient time to provide 45 days' advance notice as required by T.C.A. §4-5-203 and to promulgate final rules before October 1, 2013.

135. The Emergency Rules thus violate T.C.A. §4-5-208(e), which provides that an agency's finding of an emergency justifying the issuance of emergency rules "shall not be based upon the agency's failure to timely process and file rules through the normal rulemaking process.

a. Violation of Article II, Section 17 of the Tennessee Constitution

136. The title of Senate Bill 1145/House Bill 881, which was enacted by the General Assembly as Chapter 377 of the Public Acts of 2013, described the bill as an act "relative to the

regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges."

137. As enacted, however, Chapter 377 also authorized the regulation of numerous individuals and organizations that are not "navigators in the implementation of the [ACA]".

138. Chapter 377 is therefore invalid because it violates Article II, Section 17, of the Tennessee Constitution, which provides in relevant part that "no bill shall become a law which embraces more than one subject, that subject to be expressed in the title."

139. The Emergency Rules are therefore void due to the failure of their authorizing legislation.

a. Violation of Freedom of Speech.

140. Chapter 377 and the Emergency Rules restrict Freedom of Speech by restricting any person, other than an insurance producer, from engaging in protected speech by educating or advising others - including even those with whom the individual has an existing professional, familial or social relationship - on matters regarding any affordability program or premium tax credits available through the Marketplace or SHOP exchange. An individual must first submit to fingerprinting and a criminal background check, and must convince the defendant Commissioner that he "possesses the requisite character and integrity" to engage in such speech. These restrictions violate the First Amendment of the United States Constitution and Article 1, Section 19 of the Tennessee Constitution.

141. Chapter 377 and the Emergency Rules bar anyone other than a licensed insurance producer, and regardless of whether the person or organization is registered with the Defendant Commissioner, from "discuss[ing] the benefits, terms, and features of a particular health plan or any other health plan and offer[ing] advice about which health plan is better or worse or suitable for a particular individual or employer." These restrictions on Freedom of Speech

violate the First Amendment of the United States Constitution and Article 1, Section 19 of the Tennessee Constitution.

a. Violation of First Amendment Freedom of Association

142. Chapter 377 and the Emergency Rules violate the Freedom of Association guaranteed by the First Amendment to the United States Constitution and Article I, Section 23 of the Tennessee Constitution by compelling individuals to affiliate with particular organizations in or to engage in constitutionally protected conduct.

143. The Emergency Rules do so by limiting the ability of any person or organization, other than an insurance producer, to:

a. facilitate enrollment in health plans or public insurance programs

b. conduct public education or provide consumer assistance related to the marketplace, or

c. assist individuals or employees in applying for coverage through an exchange or insurance affordability program

until such individual has affiliated with a navigator organization or a certified application counselor organization and submitted to their supervision.

144. While federal rules legitimately require such affiliation by any individual who wishes to qualify as a federally certified navigator or CAC, Chapter 377 and the Emergency rules impermissibly extend the requirement to *anyone* who wishes to engage in such constitutionally protected activities, thereby compelling affiliation with an organization in violation of the individual's freedom to associate with such persons or organizations as he chooses.

a. Violation of the Due Process Void-for-Vagueness Doctrine

145. The Emergency Rules purport to govern everyone who "facilitates enrollment" or who "could reasonably be described or designated as, navigators, 'non-Navigator assistance personnel' or 'in-person assistance personnel', enrollment assisters, application assisters or application counselors or certified application counselors."

146. Those terms are so vague, and can be interpreted so broadly, that they are void for failing to afford individuals fair notice of the actions that would bring them within the scope of the rule and its penalties.

147. The Emergency Rules therefore violate the Due Process Clause of the Fourteenth Amendment and Article 1, Section 8 of the Tennessee Constitution.

a. Conflict with federal law

148. The Emergency Rules prohibit anyone, other than an insurance producer, from discussing the benefits, terms and features of a particular health plan over any other health plans and offering advice about which health plan is better or worse or suitable for a particular individual or employer. Rule 0780-01-550-.06(b).

149. This prohibition directly conflicts with federal regulations that require federally designated navigators and CACs to "provide information to consumers about the full range of [qualified health plan] options and insurance affordability programs for which they are eligible." 45 C.F.R. §§ 155.215(a)(2)(iv) and 155.225(c)(3).

150. CACs are specifically directed by federal regulations to "act in the best interest of the applicants and enrollees assisted," which requires them to provide the sort of advice and assistance that the Emergency Rules prohibit. 45 C.F.R. § 155.255(d)(4).

151. Because Emergency Rule 0780-01-550-.06(b) thus prevents the application of the provisions of Title I of the ACA, that Emergency Rule is preempted by federal law. 42 U.S.C. § 18031(k); 45 C.F.R. § 155.210. Emergency Rule 0780-01-550-.06(b) is therefore invalid under the Supremacy Clause of the United States Constitution.

152. The Emergency Rules require any person, other than an insurance producer, who wishes to perform the duties of a navigator or certified application counselor to first go through an application process and obtain the approval of the defendant Commissioner. That process was not created until the week before Title I of the ACA is to take effect on October 1, 2013, leaving too little time for most individuals to meet the registration requirements and be able to fulfill their federal duties as of that date.

153. Because the Emergency Rules thus prevent the timely application of the provisions of Title I of the ACA, including the provisions for consumer assistance, the Emergency Rules are preempted by the ACA. 42 U.S.C. § 18031(k); 45 C.F.R. § 155.210.

154. Because the Emergency Rules prevent the timely application of the provisions of Title I of the ACA, including the provisions for consumer assistance, the Emergency Rules exceed the regulatory authority granted by Chapter 377. Chapter 377 only authorizes such regulation of navigators "as may be consistent with the Patient Protection and Affordable Care Act." The Emergency Rules are therefore void.

155. Because the Emergency Rules prevent the timely application of the provisions of Title I of the ACA, including the provisions for consumer assistance, the Emergency Rules are preempted by the ACA. under the Supremacy Clause of the United States Constitution.

a. Violation of Separation of Powers as applied to the practice of law

156. Chapter 377 and the Emergency Rules confer upon the defendant Commissioner, an officer of the Executive Branch, and the Tennessee Department of Commerce and Insurance, a department of the Executive Branch, the ability to regulate a broad range of communications and actions by any person who is not an insurance producer.

157. The statute and Emergency Rules make no exception for attorneys engaged in the practice of law, and thus restricts attorneys' ability to counsel and assist their clients.

158. By thus regulating the practice of law in this manner, Chapter 377 and the Emergency Rules authorize the Executive Branch to exercise powers properly reserved to the Judiciary Department. Chapter 377 and the Emergency Rules are therefore void under Article II, Section 2 of the Tennessee Constitution as applied to attorneys.

a. Violation of federal rights by persons acting under color of state law

159. By promulgating and enforcing the Emergency Rules, the defendant Commissioner has violated and is continuing to violate the federally protected rights of the Plaintiffs, as described above, while acting under color of state law.

160. These violations therefore give rise to a cause of action under 42 U.S.C. § 1983 and justify the grant of declaratory and injunctive relief, as well as ancillary attorneys' fees, under that statute.

PRAYER FOR RELIEF

161. Paragraphs 1 through 160 are incorporated by reference.

162. As relief for the legal violations described above, Plaintiffs respectfully request that:

a. process issue and that the Defendants be required to answer;

b. pursuant to T.C.A. §§ 29-14-102 and 4-5-225 and Rule 57 of the Tennessee Rules of Civil Procedure, the Court declare Chapter 377 and the Emergency Rules void and of no effect because they violate the regulations, statutes and constitutional provisions cited above;

c. pursuant to Rule 65 of the Tennessee Rules of Civil Procedure, the Court temporarily restrain, and temporarily and permanently enjoin, enforcement of the Chapter 377 and the Emergency Rules; and

d. that the Court declare that Chapter 377 and the Emergency Rules violate the federal Constitution and the state statutory provisions discussed above; and

e. that the Court award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

f. that the Court grant the Plaintiffs any other or further relief to which they may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

Respectfully submitted,

Christopher E. Coleman TN BPR 24950
Michele Johnson TN BPR 16756
Kristin Ware TN BPR 29444
TENNESSEE JUSTICE CENTER
301 Charlotte Avenue
Nashville, Tennessee 37201
Phone: (615) 255-0331
Fax: (615) 255-0354
ccoleman@tnjustice.org
mjohnson@tnjustice.org
kware@tnjustice.org

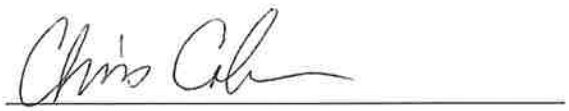
Michael G. Abelow (No. 26710)
SHERRARD & ROE, PLC
150 Third Avenue South, Suite 1100
Nashville, TN 37201
Phone: (615) 742-4532

Fax: (615) 742-4539
mabelow@sherrardroe.com

Counsel for the Plaintiffs

Cost Bond

I am surety for costs in this cause not to exceed 1,000.



Christopher Coleman

Declaration of Margie Parsley

I declare under penalty of perjury as follows:

1. I am an adult resident of Nashville, Davidson County, Tennessee.
2. I am the Co-President of The League of Women Voters of Tennessee, and in that role authorized to speak on behalf of the League of Women Voters of Tennessee.
3. The League of Women Voters of Tennessee has approved the filing of this Complaint on the organization's behalf.
4. As Co-President of the League of Women Voters, I am authorized to sign this declaration on the organization's behalf.
5. The allegations in the Complaint regarding the League of Women Voters and its claims in this case are correct.
6. The foregoing statements are true and correct. Dated this 27th day of September, 2013.

Margie Parsley

Margie Parsley, Co-President
The League of Women Voters of Tennessee, Inc.

I declare under penalty of perjury that the foregoing statements concerning me and my son and our circumstances are true and correct. Dated this 27th day of September, 2013.

Carol Coppinger

Carol Coppinger

I declare under penalty of perjury that the foregoing statements concerning me and my circumstances are true and correct. Dated this 27 day of September, 2013.

Allison Cavopol

I declare under penalty of perjury that the foregoing statements concerning me and my circumstances are true and correct. Dated this 27th day of September, 2013.

Tom John M.D.

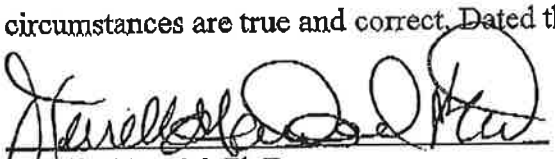
Tom John, M.D.

Declaration of Reverend Jerry Crisp

I declare under penalty of perjury that the foregoing statements concerning me and my circumstances are true and correct. Dated this 27th day of September, 2013.

Reverend Jerry Crisp

I declare under penalty of perjury that the foregoing statements concerning me and my circumstances are true and correct. Dated this 27th day of September, 2013.



Terrell McDaniel, Ph.D.

I declare under penalty of perjury that the foregoing statements concerning me and my circumstances are true and correct. Dated this 27th day of September, 2013.

Brian Paddock

Brian Paddock

Declaration of Randall Rice

I declare under penalty of perjury that the foregoing statements concerning me and my circumstances are true and correct. Dated this 27 day of September, 2013.

Randall Rice

Declaration of Meryl Rice

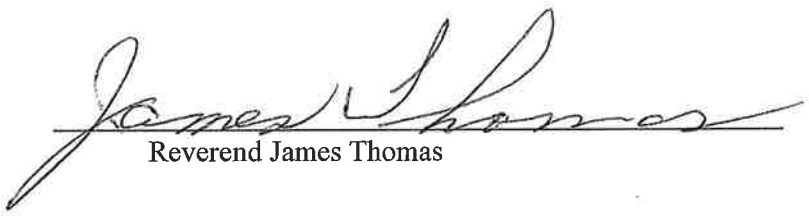
I declare under penalty of perjury that the foregoing statements concerning me and my circumstances are true and correct. Dated this 27th day of September, 2013.

Meryl Rice

Meryl Rice

Declaration of Reverend James Thomas

I declare under penalty that the foregoing statements in the Complaint pertaining to me and my circumstances are true and correct. Dated this 27th day of September, 2013.



Reverend James Thomas

Appendices

Appendix 1 - 42 U.S.C § 18031(j)-(k)

Appendix 2 - 45 C.F.R. Part 155

Appendix 3 - Senate Bill 1145/House Bill 881

Appendix 4 - Chapter 377, Public Acts of 2013

Appendix 5 - Tennessee Department of Commerce and Insurance Emergency Rules, Chapter 0780-01-55

Appendix 6 - TDCI Frequently Asked Questions and WPLN Radio news article

Appendix 7 - TDCI Online Organizational Application for Registration as Navigator

Appendix 8 - TDCI Online Individual Application for Registration as Navigator

as health information exchanges and regional health information organizations, an examination of the extent to which such best practices are successful with respect to the quality of the resulting health care provided to the individual and with respect to the ability of the health care provider to manage such best practices, and an examination of the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

(e) Report required

Not later than 5 years after February 17, 2009, the Government Accountability Office shall submit to Congress and the Secretary of Health and Human Services a report on the impact of any of the provisions of this Act on health insurance premiums, overall health care costs, adoption of electronic health records by providers, and reduction in medical errors and other quality improvements.

(f) Study

The Secretary shall study the definition of "psychotherapy notes" in section 164.501 of title 45, Code of Federal Regulations, with regard to including test data that is related to direct responses, scores, items, forms, protocols, manuals, or other materials that are part of a mental health evaluation, as determined by the mental health professional providing treatment or evaluation in such definitions and may, based on such study, issue regulations to revise such definition.

(Pub. L. 111–5, div. A, title XIII, § 13424, Feb. 17, 2009, 123 Stat. 276.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), was in the original "this subtitle", meaning subtitle D (§ 13400 et seq.) of title XIII of div. A of Pub. L. 111–5, Feb. 17, 2009, 123 Stat. 258, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Tables.

This Act, referred to in subsec. (e), means div. A of Pub. L. 111–5, Feb. 17, 2009, 123 Stat. 116, see section 4 of Pub. L. 111–5, set out as a note under section 1 of Title 1, General Provisions. For complete classification of div. A to the Code, see Tables.

CHAPTER 157—QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

SUBCHAPTER I—IMMEDIATE ACTIONS TO PRESERVE AND EXPAND COVERAGE

Sec.
18001. Immediate access to insurance for uninsured individuals with a preexisting condition.
18002. Reinsurance for early retirees.
18003. Immediate information that allows consumers to identify affordable coverage options.

SUBCHAPTER II—OTHER PROVISIONS

18011. Preservation of right to maintain existing coverage.
18012. Rating reforms must apply uniformly to all health insurance issuers and group health plans.
18013. Annual report on self-insured plans.

SUBCHAPTER III—AVAILABLE COVERAGE CHOICES FOR ALL AMERICANS

PART A—ESTABLISHMENT OF QUALIFIED HEALTH PLANS

18021. Qualified health plan defined.
Sec.
18022. Essential health benefits requirements.
18023. Special rules.
18024. Related definitions.

PART B—CONSUMER CHOICES AND INSURANCE COMPETITION THROUGH HEALTH BENEFIT EXCHANGES

18031. Affordable choices of health benefit plans.
18032. Consumer choice.
18033. Financial integrity.

PART C—STATE FLEXIBILITY RELATING TO EXCHANGES

18041. State flexibility in operation and enforcement of Exchanges and related requirements.
18042. Federal program to assist establishment and operation of nonprofit, member-run health insurance issuers.
18043. Funding for the territories.
18044. Level playing field.

PART D—STATE FLEXIBILITY TO ESTABLISH ALTERNATIVE PROGRAMS

18051. State flexibility to establish basic health programs for low-income individuals not eligible for medicaid.
18052. Waiver for State innovation.
18053. Provisions relating to offering of plans in more than one State.
18054. Multi-State plans.

PART E—REINSURANCE AND RISK ADJUSTMENT

18061. Transitional reinsurance program for individual market in each State.
18062. Establishment of risk corridors for plans in individual and small group markets.
18063. Risk adjustment.

SUBCHAPTER IV—AFFORDABLE COVERAGE CHOICES FOR ALL AMERICANS

PART A—PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS

18071. Reduced cost-sharing for individuals enrolling in qualified health plans.

PART B—ELIGIBILITY DETERMINATIONS

18081. Procedures for determining eligibility for Exchange participation, premium tax credits and reduced cost-sharing, and individual responsibility exemptions.
18082. Advance determination and payment of premium tax credits and cost-sharing reductions.
18083. Streamlining of procedures for enrollment through an Exchange and State medicaid, CHIP, and health subsidy programs.
18084. Premium tax credit and cost-sharing reduction payments disregarded for Federal and federally-assisted programs.

SUBCHAPTER V—SHARED RESPONSIBILITY FOR HEALTH CARE

PART A—INDIVIDUAL RESPONSIBILITY

18091. Requirement to maintain minimum essential coverage; findings.
18092. Notification of nonenrollment.

PART B—EMPLOYER RESPONSIBILITIES

18101. Repealed.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

18111. Definitions.
18112. Transparency in Government.
18113. Prohibition against discrimination on assisted suicide.
18114. Access to therapies.
18115. Freedom not to participate in Federal health insurance programs.

endar year, the determination of whether such employer is a small or large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Predecessors

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) Continuation of participation for growing small employers

If—

(i) a qualified employer that is a small employer makes enrollment in qualified health plans offered in the small group market available to its employees through an Exchange; and

(ii) the employer ceases to be a small employer by reason of an increase in the number of employees of such employer;

the employer shall continue to be treated as a small employer for purposes of this subchapter for the period beginning with the increase and ending with the first day on which the employer does not make such enrollment available to its employees.

(c) Secretary

In this title,[1] the term "Secretary" means the Secretary of Health and Human Services.

(d) State

In this title,[1] the term "State" means each of the 50 States and the District of Columbia.

(e) Educated health care consumers

The term "educated health care consumer" means an individual who is knowledgeable about the health care system, and has background or experience in making informed decisions regarding health, medical, and scientific matters.

(Pub. L. 111–148, title I, §1304, title X, §10104(d), Mar. 23, 2010, 124 Stat. 171, 900.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a) to (d), is title I of Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 130, which enacted this chapter and enacted, amended, and transferred numerous other sections and notes in the Code. For complete classification of title I to the Code, see Tables.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–148, §10104(d), added subsec. (e).

PART B—CONSUMER CHOICES AND INSURANCE COMPETITION THROUGH HEALTH BENEFIT EXCHANGES

§ 18031. Affordable choices of health benefit plans

(a) Assistance to States to establish American Health Benefit Exchanges

(1) Planning and establishment grants

There shall be appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, an amount necessary to enable the Secretary to make awards, not later than 1 year after March 23, 2010, to States in the amount specified in paragraph (2) for the uses described in paragraph (3).

(2) Amount specified

For each fiscal year, the Secretary shall determine the total amount that the Secretary will make available to each State for grants under this subsection.

(3) Use of funds

A State shall use amounts awarded under this subsection for activities (including planning activities) related to establishing an American Health Benefit Exchange, as described in subsection (b).

(4) Renewability of grant

(A) In general

Subject to subsection (d)(4), the Secretary may renew a grant awarded under paragraph (1) if the State recipient of such grant—

(i) is making progress, as determined by the Secretary, toward—

(I) establishing an Exchange; and

(II) implementing the reforms described in subtitles A and C (and the amendments made by such subtitles); and

(ii) is meeting such other benchmarks as the Secretary may establish.

(B) Limitation

No grant shall be awarded under this subsection after January 1, 2015.

(5) Technical assistance to facilitate participation in SHOP Exchanges

The Secretary shall provide technical assistance to States to facilitate the participation of qualified small businesses in such States in SHOP Exchanges.

(b) American Health Benefit Exchanges

(1) In general

Each State shall, not later than January 1, 2014, establish an American Health Benefit Exchange (referred to in this title[1] as an "Exchange") for the State that—

(A) facilitates the purchase of qualified health plans;

(B) provides for the establishment of a Small Business Health Options Program (in this title[1] referred to as a "SHOP Exchange") that is designed to assist qualified employers in the State who are small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market in the State; and

(C) meets the requirements of subsection (d).

(2) Merger of individual and SHOP Exchanges

A State may elect to provide only one Exchange in the State for providing both Exchange and SHOP Exchange services to both qualified individuals and qualified small employers, but only if the Exchange has adequate resources to assist such individuals and employers.

[1] See References in Text note below.

(i) utilizes a patient safety evaluation system as described in part C of title IX of the Public Health Service Act [42 U.S.C. 299b–21 et seq.]; and

(ii) implements a mechanism to ensure that each patient receives a comprehensive program for hospital discharge that includes patient-centered education and counseling, comprehensive discharge planning, and post discharge reinforcement by an appropriate health care professional; or

(B) a health care provider only if such provider implements such mechanisms to improve health care quality as the Secretary may by regulation require.

(2) Exceptions

The Secretary may establish reasonable exceptions to the requirements described in paragraph (1).

(3) Adjustment

The Secretary may by regulation adjust the number of beds described in paragraph (1)(A).

(i) Navigators

(1) In general

An Exchange shall establish a program under which it awards grants to entities described in paragraph (2) to carry out the duties described in paragraph (3).

(2) Eligibility

(A) In general

To be eligible to receive a grant under paragraph (1), an entity shall demonstrate to the Exchange involved that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan.

(B) Types

Entities described in subparagraph (A) may include trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration, other licensed insurance agents and brokers, and other entities that—

(i) are capable of carrying out the duties described in paragraph (3);

(ii) meet the standards described in paragraph (4); and

(iii) provide information consistent with the standards developed under paragraph (5).

(3) Duties

An entity that serves as a navigator under a grant under this subsection shall—

(A) conduct public education activities to raise awareness of the availability of qualified health plans;

(B) distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of title 26 and cost-sharing reductions under section 18071 of this title;

(C) facilitate enrollment in qualified health plans;

(D) provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act [42 U.S.C. 300gg–93], or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and

(E) provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges.

(4) Standards

(A) In general

The Secretary shall establish standards for navigators under this subsection, including provisions to ensure that any private or public entity that is selected as a navigator is qualified, and licensed if appropriate, to engage in the navigator activities described in this subsection and to avoid conflicts of interest. Under such standards, a navigator shall not—

(i) be a health insurance issuer; or

(ii) receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.

(5) Fair and impartial information and services

The Secretary, in collaboration with States, shall develop standards to ensure that information made available by navigators is fair, accurate, and impartial.

(6) Funding

Grants under this subsection shall be made from the operational funds of the Exchange and not Federal funds received by the State to establish the Exchange.

(j) Applicability of mental health parity

Section 2726 of the Public Health Service Act [42 U.S.C. 300gg–26] shall apply to qualified health plans in the same manner and to the same extent as such section applies to health insurance issuers and group health plans.

(k) Conflict

An Exchange may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary under this subchapter.

(Pub. L. 111–148, title I, § 1311, title X, §§ 10104(e)–(h), 10203(a), Mar. 23, 2010, 124 Stat. 173, 900, 901, 927.)

REFERENCES IN TEXT

Subtitles A and C, referred to in subsec. (a)(4)(A)(i)(II), are subtitles A (§§ 1001–1004) and C (§§ 1201–1255), respectively, of title I of Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 130, 154. Subtitle A enacted sec-

Downloaded 9-26-13 from:http://www.ecfr.gov/cgi-in/retrieveECFR?gp=&SID=cb95647a94cc2bf0896a29670ca9f318&n=45y1.0.1.2.70&r=PART&ty=HTML#45:1.0.1.2.70.3.27.2

45 Code of Federal Regulations

§ 155.200 Functions of an Exchange.

Link to an amendment published at 78 FR 54134, Aug. 30, 2013.

(a) *General requirements.* The Exchange must perform the minimum functions described in this subpart and in subparts D, E, G, H, and K of this part.

(b) *Certificates of exemption.* The Exchange must issue certificates of exemption consistent with sections 1311(d)(4)(H) and 1411 of the Affordable Care Act.

(c) *Oversight and financial integrity.* The Exchange must perform required functions related to oversight and financial integrity requirements in accordance with section 1313 of the Affordable Care Act.

(d) *Quality activities.* The Exchange must evaluate quality improvement strategies and oversee implementation of enrollee satisfaction surveys, assessment and ratings of health care quality and outcomes, information disclosures, and data reporting in accordance with sections 1311(c)(1), 1311(c)(3), and 1311(c)(4) of the Affordable Care Act.

(e) *Clarification.* In carrying out its responsibilities under this subpart, an Exchange is not operating on behalf of a QHP.

[77 FR 11718, Feb. 27, 2012, as amended at 78 FR 39523, July 1, 2013]

Back to Top

§ 155.205 Consumer assistance tools and programs of an Exchange.

(a) *Call center.* The Exchange must provide for operation of a toll-free call center that addresses the needs of consumers requesting assistance and meets the requirements outlined in paragraphs (c)(1), (c)(2)(i), and (c)(3) of this section.

(b) *Internet Web site.* The Exchange must maintain an up-to-date Internet Web site that meets the requirements outlined in paragraph (c) of this section and:

(1) Provides standardized comparative information on each available QHP, including at a minimum:

(i) Premium and cost-sharing information;

Appendix 2

(ii) The summary of benefits and coverage established under section 2715 of the PHS Act;

(iii) Identification of whether the QHP is a bronze, silver, gold, or platinum level plan as defined by section 1302(d) of the Affordable Care Act, or a catastrophic plan as defined by section 1302(e) of the Affordable Care Act;

(iv) The results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act;

(v) Quality ratings assigned in accordance with section 1311(c)(3) of the Affordable Care Act;

(vi) Medical loss ratio information as reported to HHS in accordance with 45 CFR part 158;

(vii) Transparency of coverage measures reported to the Exchange during certification in accordance with § 155.1040; and

(viii) The provider directory made available to the Exchange in accordance with § 156.230.

(2) Publishes the following financial information:

(i) The average costs of licensing required by the Exchange;

(ii) Any regulatory fees required by the Exchange;

(iii) Any payments required by the Exchange in addition to fees under paragraphs (b)(2)(i) and (ii) of this section;

(iv) Administrative costs of such Exchange; and

(v) Monies lost to waste, fraud, and abuse.

(3) Provides applicants with information about Navigators as described in § 155.210 and other consumer assistance services, including the toll-free telephone number of the Exchange call center required in paragraph (a) of this section.

(4) Allows for an eligibility determination to be made in accordance with subpart D of this part.

(5) Allows a qualified individual to select a QHP in accordance with subpart E of this part.

(6) Makes available by electronic means a calculator to facilitate the comparison of available QHPs after the application of any advance payments of the premium tax credit and any cost-sharing reductions.

(c) *Accessibility.* Information must be provided to applicants and enrollees in plain language and in a manner that is accessible and timely to—

(1) Individuals living with disabilities including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(2) Individuals who are limited English proficient through the provision of language services at no cost to the individual, including

(i) Oral interpretation;

(ii) Written translations; and

(iii) Taglines in non-English languages indicating the availability of language services.

(3) Inform individuals of the availability of the services described in paragraphs (c)(1) and (2) of this section and how to access such services.

(d) *Consumer assistance.* (1) The Exchange must have a consumer assistance function that meets the standards in paragraph (c) of this section, including the Navigator program described in § 155.210. Any individual providing such consumer assistance must be trained regarding QHP options, insurance affordability programs, eligibility, and benefits rules and regulations governing all insurance affordability programs operated in the state, as implemented in the state, prior to providing such assistance.

(2) The Exchange must provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage.

(e) *Outreach and education.* The Exchange must conduct outreach and education activities that meet the standards in paragraph (c) of this section to educate consumers about the Exchange and insurance affordability programs to encourage participation.

[77 FR 11718, Feb. 27, 2012, as amended at 78 FR 42859, July 17, 2013]

Back to Top

§ 155.210 Navigator program standards.

(a) *General Requirements.* The Exchange must establish a Navigator program consistent with this section through which it awards grants to eligible public or private entities or individuals described in paragraph (c) of this section.

(b) *Standards.* The Exchange must develop and publicly disseminate—

(1) A set of standards, to be met by all entities and individuals to be awarded Navigator grants, designed to prevent, minimize and mitigate any conflicts of interest, financial or otherwise, that may exist for an entity or individuals to be awarded a Navigator grant and to ensure that all entities and individuals carrying out Navigator functions have appropriate integrity; and

(2) A set of training standards, to be met by all entities and individuals carrying out Navigator functions under the terms of a Navigator grant, to ensure expertise in:

(i) The needs of underserved and vulnerable populations;

(ii) Eligibility and enrollment rules and procedures;

(iii) The range of QHP options and insurance affordability programs; and,

(iv) The privacy and security standards applicable under § 155.260.

(c) *Entities and individuals eligible to be a Navigator.* (1) To receive a Navigator grant, an entity or individual must—

(i) Be capable of carrying out at least those duties described in paragraph (e) of this section;

(ii) Demonstrate to the Exchange that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a QHP;

(iii) Meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable, so long as such standards do not prevent the application of the provisions of title I of the Affordable Care Act;

(iv) Not have a conflict of interest during the term as Navigator; and,

(v) Comply with the privacy and security standards adopted by the Exchange as required in accordance with § 155.260.

(2) The Exchange must include an entity as described in paragraph (c)(2)(i) of this section and an entity from at least one of the other following categories for receipt of a Navigator grant:

(i) Community and consumer-focused nonprofit groups;

(ii) Trade, industry, and professional associations;

(iii) Commercial fishing industry organizations, ranching and farming organizations;

(iv) Chambers of commerce;

(v) Unions;

(vi) Resource partners of the Small Business Administration;

(vii) Licensed agents and brokers; and

(viii) Other public or private entities or individuals that meet the requirements of this section. Other entities may include but are not limited to Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

(d) *Prohibition on Navigator conduct.* The Exchange must ensure that a Navigator must not—

(1) Be a health insurance issuer or issuer of stop loss insurance;

(2) Be a subsidiary of a health insurance issuer or issuer of stop loss insurance;

(3) Be an association that includes members of, or lobbies on behalf of, the insurance industry; or,

(4) Receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or a non-QHP.

(e) *Duties of a Navigator.* An entity that serves as a Navigator must carry out at least the following duties:

(1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;

(2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs;

(3) Facilitate selection of a QHP;

(4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and

(5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(f) *Funding for Navigator grants.* Funding for Navigator grants may not be from Federal funds received by the State to establish the Exchange.

[77 FR 11718, Feb. 27, 2012, as amended at 78 FR 42859, July 17, 2013]

Back to Top

§ 155.215 Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210 in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant.

(a) *Conflict-of-interest standards.* The following conflict-of-interest standards apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act:

(1) *Conflict-of-interest standards for Navigators.* (i) All Navigator entities, including Navigator grant applicants, must submit to the Exchange a written attestation that the Navigator, including the Navigator's staff:

(A) Is not a health insurance issuer or issuer of stop loss insurance;

(B) Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;

(C) Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and

(D) Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

(ii) All Navigator entities must submit to the Exchange a written plan to remain free of conflicts of interest during the term as a Navigator.

(iii) All Navigator entities, including the Navigator's staff, must provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.

(iv) All Navigator entities, including the Navigator's staff, must disclose to the Exchange and, in plain language, to each consumer who receives application assistance from the Navigator:

(A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in § 155.210(d), which the Navigator intends to sell while carrying out the consumer assistance functions;

(B) Any existing employment relationships, or any former employment relationships within the last 5 years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and

(C) Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

(2) *Conflict-of-interest standards for Non-Navigator assistance personnel carrying out consumer assistance functions under § 155.205(d) and (e).* All Non-Navigator entities or individuals authorized to carry out consumer assistance functions under § 155.205(d) and (e) must—

(i) Comply with the prohibitions on Navigator conduct set forth at § 155.210(d) and the duties of a Navigator set forth at § 155.210(e)(2).

(ii) Submit to the Exchange a written attestation that the entity or individual—

(A) Is not a health insurance issuer or issuer of stop loss insurance;

(B) Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;

(C) Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and

(D) Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

(iii) Submit to the Exchange a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under § 155.205(d) and (e).

(iv) Provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.

(v) Submit to the Exchange, and, in plain language, to each consumer who receives application assistance from the entity or individual:

(A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in § 155.210(d), which the entity or individual intends to sell while carrying out the consumer assistance functions;

(B) Any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries

of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and

(C) Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

(b) *Training standards for Navigators and Non-Navigator assistance personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210.* The following training standards apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f), and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act.

(1) Certification and recertification standards. All individuals or entities who carry out consumer assistance functions under §§ 155.205(d) and (e) and 155.210, including Navigators, must meet the following certification and recertification requirements.

(i) Obtain certification by the Exchange prior to carrying out any consumer assistance functions under §§ 155.205(d) and (e) or 155.210;

(ii) Register for and complete a HHS-approved training;

(iii) Following completion of the HHS-approved training described in paragraph (b)(1)(ii) of this section, complete and achieve a passing score on all approved certification examinations prior to carrying out any consumer assistance functions under §§ 155.205(d) and (e) or 155.210;

(iv) Obtain continuing education and be certified and/or recertified on at least an annual basis; and

(v) Be prepared to serve both the individual Exchange and SHOP.

(2) *Training module content standards.* All individuals who carry out the consumer assistance functions under §§ 155.205(d) and (e) and 155.210 must receive training in the following subjects:

(i) QHPs (including the metal levels described at § 156.140(b) of this subchapter), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;

(ii) The range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program (CHIP), and other public programs;

(iii) The tax implications of enrollment decisions;

(iv) Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;

(v) Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;

(vi) Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through an Exchange; and the individual responsibility to have health insurance;

(vii) Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;

(viii) Providing culturally and linguistically appropriate services;

(ix) Ensuring physical and other accessibility for people with a full range of disabilities;

(x) Understanding differences among health plans;

(xi) Privacy and security standards applicable under § 155.260 for handling and safeguarding consumers' personally identifiable information;

(xii) Working effectively with individuals with limited English proficiency, people with a full range of disabilities, and vulnerable, rural, and underserved populations;

(xiii) Customer service standards;

(xiv) Outreach and education methods and strategies; and

(xv) Applicable administrative rules, processes and systems related to Exchanges and QHPs.

(c) *Providing Culturally and Linguistically Appropriate Services (CLAS Standards).* The following standards will apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act. To ensure that information provided as part of any consumer assistance functions under §§ 155.205(d) and (e) or 155.210 is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency as required by §§ 155.205(c)(2) and 155.210(e)(5), any entity or individual carrying out these functions must:

(1) Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs;

(2) Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken;

(3) Provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services;

(4) Provide oral and written notice to consumers with limited English proficiency, in their preferred language, informing them of their right to receive language assistance services and how to obtain them;

(5) Receive ongoing education and training in culturally and linguistically appropriate service delivery; and

(6) Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

(d) *Standards ensuring access by persons with disabilities.* The following standards related to ensuring access by people with disabilities will apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f), and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act. Any entity or individual carrying out any consumer assistance functions under §§ 155.205(d) and (e) or 155.210, and in accordance with § 155.205(c), must—

(1) Ensure that any consumer education materials, Web sites, or other tools utilized for consumer assistance purposes, are accessible to people with disabilities, including those with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities;

(2) Provide auxiliary aids and services for individuals with disabilities, at no cost, when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as interpreters can satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services;

(3) Provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities;

(4) Ensure that authorized representatives are permitted to assist an individual with a disability to make informed decisions;

(5) Acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and supports programs when appropriate; and

(6) Be able to work with all individuals regardless of age, disability, or culture, and seek advice or experts when needed.

(e) *Monitoring.* Any Exchange operated by HHS during the exercise of its authority under § 155.105(f) will monitor compliance with the standards in this section and the requirements of §§ 155.205(d) and (e) and 155.210.

[78 FR 42859, July 17, 2013]

Back to Top

§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

Link to an amendment published at 78 FR 54134, Aug. 30, 2013.

(a) *General rule.* A State may permit agents and brokers to—

(1) Enroll individuals, employers or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State;

(2) Subject to paragraphs (c), (d), and (e) of this section, enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange; and

(3) Subject to paragraphs (d) and (e) of this section, assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.

(b)(1) *Web site disclosure.* The Exchange or SHOP may elect to provide information regarding licensed agents and brokers on its Web site for the convenience of consumers seeking insurance through that Exchange and may elect to limit the information to information regarding licensed agents and brokers who have completed any required Exchange or SHOP registration and training process.

(2) A Federally-facilitated Exchange or SHOP will limit the information provided on its Web site regarding licensed agents and brokers to information regarding licensed agents and brokers who have completed registration and training.

(c) *Enrollment through the Exchange.* A qualified individual may be enrolled in a QHP through the Exchange with the assistance of an agent or broker if—

(1) The agent or broker ensures the applicant's completion of an eligibility verification and enrollment application through the Exchange Web site as described in § 155.405;

(2) The Exchange transmits enrollment information to the QHP issuer as provided in § 155.400(a) to allow the issuer to effectuate enrollment of qualified individuals in the QHP.

(3) When an Internet Web site of the agent or broker is used to complete the QHP selection, at a minimum the Internet Web site must:

(i) Meet all standards for disclosure and display of QHP information contained in § 155.205(b)(1) and (c);

(ii) Provide consumers the ability to view all QHPs offered through the Exchange;

(iii) Not provide financial incentives, such as rebates or giveaways;

(iv) Display all QHP data provided by the Exchange;

(v) Maintain audit trails and records in an electronic format for a minimum of ten years; and

(vi) Provide consumers with the ability to withdraw from the process and use the Exchange Web site described in § 155.205(b) instead at any time.

(d) *Agreement.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with the terms of an agreement between the agent or broker and the Exchange under which the agent or broker at least:

(1) Registers with the Exchange in advance of assisting qualified individuals enrolling in QHPs through the Exchange;

(2) Receives training in the range of QHP options and insurance affordability programs; and

(3) Complies with the Exchange's privacy and security standards adopted consistent with § 155.260.

(e) *Compliance with State law.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with applicable State law related to agents and brokers, including applicable State law related to confidentiality and conflicts of interest.

[77 FR 18444, Mar. 27, 2012, as amended at 78 FR 15533, Mar. 11, 2013]

Back to Top

§ 155.225 Certified application counselors.

(a) *General rule.* The Exchange must have a certified application counselor program that complies with the requirements of this section.

(b) *Exchange designation of organizations.* (1) The Exchange may designate an organization, including an organization designated as a Medicaid certified application counselor organization by a state Medicaid or CHIP agency, to certify its staff members or volunteers to act as certified application counselors who perform the duties and meet the standards and requirements for certified application counselors in this section if the organization—

(i) Enters into an agreement with the Exchange to comply with the standards and requirements of this section including the standards specified in paragraphs (d)(3) through (d)(5) of this section; and

(ii) Maintains a registration process and method to track the performance of certified application counselors.

(2) An Exchange may comply with paragraph (a) of this section either by—

(i) Designating organizations to certify application counselors in compliance with paragraph (b)(1) of this section;

(ii) Directly certifying individual staff members or volunteers of Exchange designated organizations to provide the duties specified in paragraph (c) of this section if the staff member or volunteer enters into an agreement with the Exchange to comply with the standards and requirements for certified application counselors in this section; or

(iii) A combination of paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) *Duties.* Certified application counselors are certified to—

(1) Provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible;

(2) Assist individuals and employees to apply for coverage in a QHP through the Exchange and for insurance affordability programs; and

(3) Help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs.

(d) *Standards of certification.* An organization designated by the Exchange to provide certified application counselor services, or an Exchange that chooses to certify individual staff members or volunteers directly under paragraph (b)(2)(ii) of this section, may certify a staff member or volunteer to perform the duties specified in paragraph (c) of this section only if the staff member or volunteer—

(1) Completes Exchange approved training regarding QHP options, insurance affordability programs, eligibility, and benefits rules and regulations governing all insurance affordability programs operated in the state, as implemented in the state, and completes and achieves a

passing score on all Exchange approved certification examinations, prior to functioning as a certified application counselor;

(2) Discloses to the organization, or to the Exchange if directly certified by an Exchange, and potential applicants any relationships the certified application counselor or sponsoring agency has with QHPs or insurance affordability programs, or other potential conflicts of interest;

(3) Complies with the Exchange's privacy and security standards adopted consistent with § 155.260, and applicable authentication and data security standards;

(4) Agrees to act in the best interest of the applicants assisted;

(5) Either directly or through an appropriate referral to a Navigator or non-Navigator assistance personnel authorized under §§ 155.205(d) and (e) or 155.210, or to the Exchange call center authorized under § 155.205(a), provides information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 U.S.C. 12101 et seq. and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 794; and

(6) Enters into an agreement with the organization regarding compliance with the standards specified in paragraphs (d), (f), and (g) of this section.

(e) *Withdrawal of designation and certification.* (1) The Exchange must establish procedures to withdraw designation from a particular organization it has designated under paragraph (b) of this section, when it finds noncompliance with the terms and conditions of the organization's agreement required by paragraph (b) of this section.

(2) If an Exchange directly certifies organizations' individual certified application counselors, it must establish procedures to withdraw certification from individual certified application counselors when it finds noncompliance with the requirements of this section.

(3) An organization designated by the Exchange under paragraph (b) of this section must establish procedures to withdraw certification from individual certified application counselors when it finds noncompliance with the requirements of this section.

(f) *Availability of information; authorization.* An organization designated by the Exchange under paragraph (b) of this section, or, if applicable, an Exchange that certifies staff members or volunteers of organizations directly must establish procedures to ensure that applicants—

(1) Are informed of the functions and responsibilities of certified application counselors; and

(2) Provide authorization prior to a certified application counselor obtaining access to an applicant's personally identifiable information and that the organization or certified application counselor maintains a record of the authorization provided.

(3) May revoke at any time the authorization provided the certified application counselor, pursuant to paragraph (f)(2) of this section.

(g) *Fees.* Organizations designated by the Exchange under paragraph (b) of this section and certified application counselors may not impose any charge on applicants for application or other assistance related to the Exchange.

[78 FR 42861, July 17, 2013]

SENATE BILL 1145

By Green

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, relative to the regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges.

WHEREAS, HR. 3590, the Patient Protection and Affordable Care Act (PPACA) became law on March 23, 2010; and

WHEREAS, PPACA established healthcare exchanges to facilitate the purchase of health insurance; and

WHEREAS, currently health insurance agents must be licensed under the Tennessee Insurance Producer Licensing Act of 2002, Tenn. Code Ann.. § 56-6-101; and

WHEREAS, the act requires insurance agents to complete both prelicensing and continuing education, undergo background cheeks, fingerprinting, and other consumer protections; and

WHEREAS, the United States Congress has declared in the McCarran Ferguson Act and the Gramm Leach Bliley Act that states should regulate the business of insurance; and

WHEREAS, PPACA has created a new, federally mandated program which requires that exchanges must establish a navigator program to assist in the enrollment of exchanges; and

WHEREAS, navigators assisting consumers will obtain disclosure of private personal information such as social security numbers, tax returns, income, and personal health information; and

WHEREAS, it is in the best interests of the people of the state of Tennessee that navigators be licensed and regulated insofar as is consistent with PPACA; now, therefore

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Appendix 3

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding the following as new part 12:

56-6-1201. For purposes of the act:

(1) "Exchange" means a health benefit exchange established or operated in this state, including a health benefit exchange established or operated by the secretary of the United States department of health and human services, pursuant to Section 1311 of the federal Affordable Care Act; and

(2) "Navigator" means a person selected to perform the activities and duties identified in Section 1311(i) of the federal Affordable Care Act. For the purposes of this section, if an organization or business entity serves as a navigator, an individual performing navigator duties for that organization or business entity is considered to be acting in the capacity of a navigator within the meaning of § 56-6-1203.

56-6-1202. Only a person licensed as an insurance producer in this state in accordance with chapter 6 may:

(1) Sell, solicit, or negotiate health insurance;

(2) Make recommendations to purchasers, enrollees, or employers or prospective purchasers or enrollees concerning the substantive benefits, terms, or conditions of health plans; or

(3) Enroll an individual or employee in a qualified health plan offered through an exchange or act as an intermediary between an employer and an insurer that offers a qualified health plan offered through an exchange.

56-6-1203. Prior to any exchange becoming operational in this state, the commissioner shall:

(1) Develop criteria for use by any exchange for the selection of a navigator pursuant to Section 1311(i) of the federal Affordable Care Act and state law;

(2) Adopt rules to establish a certification and training program for a prospective individual navigator that includes initial and continuing education requirements and an examination; and

(3) Adopt rules, to the extent permitted by the federal Affordable Care Act, that require a navigator to carry and maintain errors and omissions insurance to cover all activities contemplated or performed pursuant to this section and Section 131 1(1) of the federal Affordable Care Act.

56-6-1204. An individual, other than a licensed insurance producer under chapter 6, or the officers and employees of an insurer licensed to transact business in this state, may not act in the capacity of a navigator unless the individual:

(1) Is at least eighteen (18) years of age;

(2) Has completed and submitted a disclosure form, which must be developed by the superintendent and which may include such information as the commissioner determines necessary, and has declared under penalty of refusal, suspension, or revocation of the navigator certification that the statements made in the form are true, correct, and complete to the best of the individual's knowledge and belief;

(3) Has submitted to any criminal history record check or regulatory background check required by the commissioner by rule;

(4) Has not committed any act that would be a ground for denial, suspension or revocation of a producer license as set forth in § 56-6412;

(5) Has successfully completed the certification and training requirements adopted by the commissioner in accordance with § 56-6-1203; and

(6) Has paid any fees required by the commissioner.

56-6-1205. The provisions of this chapter and chapter 8 and any rules adopted pursuant to those chapters apply to navigators. For purposes of this section and the application of other provisions of this title, the duties of a navigator are deemed to constitute the business of insurance.

56-6-1206. The commissioner of commerce and insurance may deny, suspend or revoke the authority of a navigator certified pursuant to this section for good cause.

56-6-1207. The commissioner of commerce and insurance is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 2. This act shall take effect on July 1, 2013, the public welfare requiring it.

State of Tennessee

PUBLIC CHAPTER NO. 377

SENATE BILL NO. 1145

By Green, Bowling, Gardenhire, Yager

Substituted for: House Bill No. 881

By Pitts, Sargent, Favors, Camper

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, relative to the regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges.

WHEREAS, HR. 3590, the Patient Protection and Affordable Care Act (PPACA) became law on March 23, 2010; and

WHEREAS, PPACA established health care exchanges to facilitate the purchase of health insurance; and

WHEREAS, currently health insurance agents must be licensed under the Tennessee Insurance Producer Licensing Act of 2002, Tenn. Code Ann. § 56-6-101; and

WHEREAS, the act requires insurance agents to complete both prelicensing and continuing education, undergo background checks, fingerprinting, and other consumer protections; and

WHEREAS, the United States Congress has declared in the McCarran-Ferguson Act and the Gramm-Leach-Bliley Act that states should regulate the business of insurance; and

WHEREAS, PPACA has created a new, federally mandated program which requires that exchanges must establish a navigator program to assist in the enrollment of exchanges; and

WHEREAS, navigators assisting consumers will obtain disclosure of private personal information such as social security numbers, tax returns, income, and personal health information; and

WHEREAS, it is in the best interest of the people of the State of Tennessee that navigators be licensed and regulated insofar as is consistent with PPACA; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding the following language as a new part:

56-6-1201. For purposes of this part:

(1) "Commissioner" means the commissioner of commerce and insurance;

(2) "Exchange" means any health benefit exchange established or operating in this state, including any exchange established or operated by the United States department of health and human services; and

(3) "Navigator" means any person, other than an insurance producer, who:

(A) Receives any funding, directly or indirectly, from an exchange, this state or the federal government to perform any of the activities and duties identified in 42 U.S.C. § 18031(i);

(B) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;

(C) Conducts public education or consumer assistance activities for, or on behalf of, an exchange; or

(D) Is described or designated by an exchange, this state or the United States department of health and human services, or could reasonably be described or designated as, a navigator, an in-person assister, enrollment assister, application assister or application counselor.

56-6-1202. No navigator shall sell, solicit or negotiate any policy of insurance, either within or outside of an exchange.

56-6-1203. The commissioner may:

(1) Issue a cease and desist order to a navigator for violating state or federal law pertaining to an exchange; and

(2) Seek injunctive relief against a navigator acting in violation of state or federal law pertaining to an exchange.

56-6-1204. The commissioner may promulgate such rules and regulations as may be necessary or appropriate to regulate the activities of navigators as may be consistent with the Patient Protection and Affordable Care Act.

56-6-1205. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.

SENATE BILL NO. 1145

PASSED: April 16, 2013

RON RAMSEY
SPEAKER OF THE SENATE

BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 14th **day of** May **2013**

BILL HASLAM, *GOVERNOR*

Department of State
Division of Publications
312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 09-29-13
Rule ID(s): 5564
File Date (effective date): 9/18/13
End Effective Date: 3/17/14

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Tony Greer, Assistant General Counsel
Address:	The Davy Crockett Tower 500 James Robertson Parkway, 2nd Floor Nashville, TN 37243
Zip:	37243
Phone:	615-741-2199
Email:	tony.greer@tn.gov

Rule Type:
X Emergency Rule

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Statement of Necessity:

Pursuant to T.C.A. § 4-5-208, the Commissioner of Commerce and Insurance is authorized to promulgate emergency rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 377 of the Public Acts of 2013 ("Act"), created a new law that specifically restricts the activities of navigators. Navigators are individuals and entities that facilitate enrollment in exchanges created pursuant to the Federal Patient Protection and Affordable Care Act ("PPACA"). The Act clarifies that navigators who are not licensed as insurance producers cannot perform any function that would require an insurance producer license, such as selling, soliciting or negotiating a contract of insurance. The Act gives the Commissioner broad rulemaking authority necessary to regulate the activities of navigators. These rules create a registration and continuing education program for navigators to ensure that individuals who are not of good moral character cannot act as navigators in this State. Further, these rules provide penalties for violations of the Act and these regulations. The Act became effective on July 1, 2013 and the public chapter was signed into law by the Governor on April 16, 2013. The exchanges being created under PPACA become operational on October 1, 2013. As such, navigators will begin facilitating enrollment in the exchanges on October 1, 2013 as well. However, the Federal Department of Health and Human Services ("HHS") did not release the final federal navigator rule until July 17, 2013. There is not enough time to go through a notice of rulemaking hearing before the October 1, 2013 operational date of the exchanges.

These rules are necessary for the Commissioner of Commerce and Insurance to establish criteria for registering navigators to ensure that individuals who are not of good moral character cannot act as navigators in this State. These rules are intended to keep convicted felons from gaining access to Tennessee citizen's financial information and to ensure that navigators are not acting as insurance producers.

Appendix 5

The October 1, 2013 operational date did not provide adequate time to conduct a notice of rulemaking hearing after the Act became effective on July 1, 2013. Due to the length of time necessary to complete the rulemaking process to promulgate rules for the registration of navigators, these emergency rules are required in order for the Commissioner of Commerce and Insurance to comply with the enactment of Legislature and to ensure that the Commissioner of Commerce and Insurance has the resources necessary to implement the Act. The Commissioner of Commerce and Insurance will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules.

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	**Chapter Title**
0780-01-55	Navigator and Certified Application Counselor Registration Requirements
Rule Number	**Rule Title**
0780-01-55-.01	Purpose and Scope
0780-01-55-.02	Definitions
0780-01-55-.03	Registration Required
0780-01-55-.04	Application for Registration
0780-01-55-.05	Registration Renewal
0780-01-55-.06	Navigator and Certified Application Counselor Conduct
0780-01-55-.07	Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration
0780-01-55-.08	Reporting to the Commissioner
0780-01-55-.09	Other laws; Severability

New Chapter
0780-01-55
Navigator and Certified Application Counselor Registration Requirements

0780-01-55-.01 Purpose and Scope.
0780-01-55-.02 Definitions.
0780-01-55-.03 Registration Required.
0780-01-55-.04 Application for Registration.
0780-01-55-.05 Registration Renewal.
0780-01-55-.06 Navigator and Certified Application Counselor Conduct.
0780-01-55-.07 Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration.
0780-01-55-.08 Reporting to the Commissioner.
0780-01-55-.09 Other laws; Severability.

Rule 0780-01-55-.01 Purpose and Scope.

The federal Patient Protection and Affordable Care Act creates health insurance exchanges that operate in Tennessee under federal law and employ navigators or certified application counselors whose role will be to facilitate individuals' and companies' enrollment in qualified health plans offered through such exchanges. Tennessee Public Acts 2013, ch. 377 reflects the intent of the legislature that licensing and regulation of such navigators and certified application counselors is necessary and in the best interest of the people of Tennessee, to ensure that they are trained and knowledgeable in the subject matter of individual and group health insurance plans and insurance coverage, and to avoid substantial risk to the health, safety, and welfare of the residents of this state. Therefore the Department is hereby creating a registration program to regulate the activity of navigators in order to appropriately regulate their activity in this State.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1201 through 56-6-1205, Patient Protection and Affordable Care Act, Public Law 111-148 as amended by Public Law 111-152 (2010).

Rule 0780-01-55-.02 Definitions.

When used in this Chapter, unless the context clearly requires otherwise, the term:

(1) "Commissioner" means the commissioner of the Tennessee Department of Commerce and Insurance;

(2) "Department" means the Tennessee Department of Commerce and Insurance;

(3) "Certified application counselor" means any employee or volunteer of a certified application counselor organization that enters into an agreement with the exchange to have its employees or volunteers:

(a) Provide information to individuals and employees about the full range of qualified health plan options and insurance affordability programs for which they are eligible;

(b) Assist individuals and employees to apply for coverage in a qualified health plan through the exchange and for insurance affordability programs; and

(c) Help to facilitate enrollment of eligible individuals in qualified health plans and insurance affordability programs.

(4) "Certified application counselor organization" means any organization, including an organization designated as a Medicaid certified application counselor organization by a state Medicaid or CHIP agency, designated by the exchange to certify its staff members or volunteers to act as certified application counselors, and includes those organizations described in 45 CFR § 155.225.

(5) "Exchange" means any health benefit exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services.

(6) "Navigator" includes all persons listed in Tenn. Code Ann. § 56-6-1201(3), who are or should be certified as "navigators" under the federal Patient Protection and Affordable Care Act, and means any individual or entity, other than an insurance producer licensed pursuant to Tennessee Code Annotated Title 56, who:

(a) Receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform any of the activities and duties identified in 42 U.S.C. 18031(i);

(b) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;

(c) Conducts public education or consumer assistance activities for or on behalf of an exchange; or

(d) Is described or designated by an exchange, the state, or the United States Department of Health and Human Services, or could reasonably be described or designated as, navigators, "non-Navigator assistance personnel" or "in-person assistance personnel", enrollment assisters, application assisters or application counselors including certified application counselors.

(7) "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association trust or corporation;

(8) "Qualified health plan" has the meaning given such term in 42 U.S.C.A. § 18021(a).

(9) "Registrant" means any person registered under this chapter or any one required to be licensed under this chapter.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-1201 through 56-6-1205, Public Law 111-148 as amended by Public Law 111-152 (2010), 42 U.S.C. § 18021(a), 42 U.S.C. § 18031(i), and 45 CFR Part 155.

Rule 0780-01-55-.03 Registration Required.

(1) No person shall act as, offer to act as, or advertise any service as a navigator, a certified application counselor or a certified application counselor organization in this state unless the individual or entity is registered with the commissioner pursuant to this rule.

(2) A person that is a navigator, a certified application counselor or a certified application counselor organization is subject to regulation by the commissioner.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1201 through 56-6-1205.

Rule 0780-01-55-.04 Application for Registration.

(1) An individual applying for a navigator or certified application counselor registration shall make application to the commissioner on a form developed by the commissioner and declare under penalty of refusal, suspension, or revocation of the registration that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen years of age;

(b) Maintains his or her principal place of business in the state;

(c) Is not disqualified for having committed any act that would be a ground for denial, suspension, or revocation of a registration under rule 0780-01-55-.07;

(d) Has not had an insurance producer license, a navigator license, a certified application counselor license, or an equivalent license or certification denied, suspended, or revoked in any state, province, district, or territory or by the United States Department of Health and Human Services;

(e) Has successfully passed the applicable federal training program for navigators or certified application counselors;

(f) Has submitted a full set of fingerprints to the commissioner and successfully completed a criminal background check in a manner prescribed by the commissioner. The commissioner may accept an equivalent criminal background check performed by the navigator entity or the certified application counselor organization;

(g) When applicable, has the written consent of the commissioner pursuant to 18 U.S.C. 1033 and T.C.A. § 56-53-106(b), or any successor statute regulating crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce;

(h) Possesses the requisite character and integrity; and

(i) Has identified the entity with which the individual is affiliated and supervised.

(2) An entity that acts as a navigator, supervises or is responsible for the activities of individual navigators, or receives funding to perform such activities shall obtain a navigator entity registration. An entity applying for navigator entity registration shall:

(a) Make application on a form and containing the information prescribed by the commissioner;

(b) Designate an individual registered as a navigator to be responsible for the entity's compliance with this chapter.

(3) An entity that acts as a certified application counselor organization, supervises or is responsible for the activities of individual certified application counselors, or receives funding to perform such activities shall obtain a certified application counselor registration. An entity applying for a certified application counselor registration shall:

(a) Make application on a form and containing the information prescribed by the commissioner;

(b) Designate an individual registered as a certified application counselor to be responsible for the entity's compliance with this chapter.

(4) The commissioner may require any documents deemed necessary to verify the information contained in an application submitted in accordance with rule 0780-01-55-.04(1), (2) and (3).

(5) Entities registered as navigator shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual navigators that it employs, supervises, or is affiliated with on a quarterly basis.

(6) Entities registered as certified application counselor organizations shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual certified application counselors that it employs, supervises, or is affiliated with on a quarterly basis.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-107, 56-2-301 and 56-6-1201 through 56-6-1205, 56-53-106 and 18 U.S.C. § 1033.

Rule 0780-01-55-.05 Registration Renewal.

(1) A navigator, business entity navigator, certified application counselor and certified application counselor organization registration shall be valid for one year. A navigator, business entity navigator, certified application counselor and certified application counselor organization registration shall expire after twelve (12) months after registration.

(2) Thirty days prior to the end of the twelve (12) month period, a navigator, business entity navigator, certified application counselor and certified application counselor organization may file an application for renewal on the application prescribed by the commissioner.

(3) Prior to the filing date for application for renewal of a license, an individual navigator or certified application counselor shall complete twelve (12) hours of continuing education requirements approved by the commissioner. Such individual shall file with the commissioner, by a method prescribed by the commissioner, satisfactory certification of completion of the continuing education requirements. Any failure to fulfill the ongoing continuing education requirements shall result in the expiration of the registration. Individual navigators and certified application counselors whose registration has expired for failing to complete the continuing education requirements may not apply for a registration until they have provided satisfactory proof to the commissioner that they have completed the required continuing education requirements and have filed for an application for registration in accordance with rule 0780-01-55-.04.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1201 through 56-6-1205.

Rule 0780-01-55-.06 Navigator and Certified Application Counselor Conduct.

(1) A navigator or certified application counselor may not:

(a) Engage in any activities that would require an insurance producer license;

(b) Discuss the benefits, terms, and features of a particular health plan over any other health plans and offer advice about which health plan is better or worse or suitable for a particular individual or employer;

(c) Recommend or endorse a particular health plan or advise consumers about which health plan to

choose; or

(d) Provide any information or services related to health benefit plans or other products not offered in the exchange except as may be required or contemplated by the duties of such person under federal law or regulation on behalf of the exchange.

(e) Accept any compensation or consideration that is dependent, in whole or in part, on whether a person enrolls in or purchases a health plan;

(f) Engage in any unfair method of competition or any fraudulent, deceptive, or dishonest act or practice; or

(g) Violate any applicable insurance law or regulation of this state or any subpoena or order of the commissioner.

(2) Only a person licensed as an insurance producer in this state may:

(a) Sell, solicit, or negotiate health insurance.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-103 and 56-6-1201 through 56-6-1205.

Rule 0780-01-55-.07 Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration.

(1) The commissioner may refuse to issue a registration or, if after providing notice consistent with the process established by T.C.A. § 4-5-320(c) and providing the opportunity for a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, to be conducted pursuant to the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-04-01, the commissioner may place on probation, suspend, revoke, or refuse to renew or reinstate, a registration issued pursuant to this chapter, or may levy a fine not to exceed One Thousand dollars ($1000) for each violation, or any combination of actions, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the registration application or any other report or filing submitted to the commissioner or Department;

(b) Violating any law, rule, including this Chapter, regulation, subpoena or order of the commissioner or of another state's commissioner;

(c) Obtaining or attempting to obtain a license or registration through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance producer license, navigator license or certified application counselor license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state; and

(l) Violating the unfair trade practices as enumerated in § 56-6-125 as if the individual were the insurance producer referenced in that statute.

(m) Failing to maintain the certification or approval to be a navigator or certified application counselor, or having such approval terminated, by the Department of Health and Human Services, or the exchange.

(2) In addition to imposing the penalties authorized by rule 0780-01-55-.07(1), pursuant to T.C.A. § 56-6-114, a registrant shall be personally liable for any premiums paid for, or valid claims made on, all contracts of insurance unlawfully sold, solicited or negotiated within this state by or through the registrant directly or indirectly, for or on behalf of an insurance company not authorized to do business in this state.

(3) Pursuant to T.C.A. § 56-6-115, a registrant who solicits a policy of insurance on behalf of an insurer shall become liable for all the duties, requirements, liabilities and penalties to which an insurance producer of the insurer is subject.

(4) The commissioner may examine and investigate the business affairs and records of any registrant, or any person required to be registered, to determine whether the individual or entity has engaged or is engaging in any violation of this chapter or applicable insurance law.

(5) The registration of a business entity may be suspended, revoked or subject to a monetary penalty if the commissioner finds, after a hearing, that an individual registrant's violation was known or should have been known by one (1) or more of the partners, officers or managers acting on behalf of the entity and the violation was neither reported to the commissioner nor corrective action taken.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-204, 56-2-301, 56-2-305, 56-6-112, 56-6-114, 56-6-115 and 56-6-1201 through 56-6-1205.

Rule 0780-01-55-.08 Reporting to the Commissioner.

(1) Each registrant shall report to the commissioner any administrative action taken by a governmental agency against him in this state or in any other jurisdiction within thirty calendar days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) A registrant shall immediately report to the commissioner any criminal prosecution of the navigator or certified application counselor taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. Failure to report within thirty days following the hearing date shall be considered a violation of this rule subject to rule 0780-01-55-.07.

(3) An entity registered under this chapter that terminates the employment, engagement, affiliation, or other relationship with an individual navigator or certified application counselor shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in rules 0780-01-55-.06 or 0780-01-55-.07, or the entity has knowledge the navigator or certified application counselor was found by a court or government body to have engaged in any of the activities in rules 0780-01-55-.06 or 0780-01-55-.07. Upon the written request of the commissioner, the entity shall provide additional information, documents, records, or other data pertaining to the termination or activity of the individual.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-204, 56-2-301 and 56-6-1201 through 56-6-1205.

Rule 0780-01-55-.09 Other laws; Severability.

(1) The requirements of Title 56, Chapter 8, Part 1, and any related rules, shall apply to individuals and entities registered under this chapter. The activities and duties of navigators and certified application counselors shall be deemed to constitute transacting the business of insurance.

(2) The requirements of this chapter shall not apply to any individual or entity licensed as an insurance producer in this state or any entity or individual exempted from having to have an insurance producer license under T.C.A. § 56-6-104(b)(1).

(3) If any provision of this chapter or its application to any person or circumstance is held invalid by a court, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable and the valid provisions or applications shall remain in full force and effect.

Authority: Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-104, 56-8-101 through 56-8-113 and 56-6-1201 through 56-6-1205.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 9/16/13

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9/16/13

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/2016

DENISE M. LEWIS
STATE OF TENNESSEE
NOTARY PUBLIC
WILSON COUNTY
My Commission Expires

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper by WEY

Robert E. Cooper, Jr.
Attorney General and Reporter

9/18/13
Date

Department of State Use Only

2013 SEP 18 AM 11:46

Filed with the Department of State on: 9/18/13

Effective for: 180 *days

Effective through: 3/17/14

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

Tre Hargett
Secretary of State

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules create a registration and continuing education program for navigators to ensure that individuals who are not of good moral character cannot act as navigators in this State. Further, these rules provide penalties for violations of the Act and these regulations. Finally these rules are designed to keep convicted felons form gaining access to Tennessee citizen's financial information and to ensure that navigators are acting as insurance producers.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This emergency rule is promulgated pursuant to 2013 Public Acts, Chapter 377, and Tenn. Code Ann. §§ 56-2-301.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will affect all individuals and entities that receive federal grant funds to operate as navigators and certified application counselors in Tennessee. The entities and individuals applying for federal grant funds may oppose these rules; however, these rules are necessary to protect the citizens of this state. Individuals who have been denied insurance producer licenses because of their background have already contacted the department inquiring how they could become navigators.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None known.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Chlora Lindley-Myers, Deputy Commissioner; Tony Greer, Chief Counsel for Insurance and TennCare Oversight.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Tony Greer, Chief Counsel for Insurance and TennCare Oversight

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Eighth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-

2199, tony.greer@tn.gov.

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
Nashville, Tennessee

Navigator and Certified Application Counselor Registration Requirements

---

Frequently Asked Questions (FAQs #1)
Release Date: September 20, 2013

Q1: May a non-navigator, non-certified application counselor offer educational information related to the Affordable Care Act and the federally facilitated marketplace?

A1: Yes. Organizations and individuals, including academic or religious institutions, libraries, and other community volunteer organizations, among others, may continue to provide community education about the Affordable Care Act and the federally facilitated marketplace, including general information about benefits, income-based tax credits, and Internet and toll-free phone options available for enrollment available on government and other public websites. However, education or community outreach that involves specifically assisting a consumer complete an application for health coverage or that otherwise walks that consumer through the federally facilitated marketplace application process, or discusses the benefits, terms, and features of the qualified health plans offered through the federally facilitated marketplace, would be considered acting as a application counselor, and that individual would be required to go through the federal certification program and register with the Tennessee Department of Commerce and Insurance.

For example, if an organization conducts a presentation in which a room full of people is shown the federally facilitated marketplace website and the presenter walks the class through a dummy application process, so long as the people in the room do not have an opportunity to sign up during the presentation, this educational presentation would not be considered acting as a navigator or application counselor under our rule and would not require registration. However, if the people in that room are sitting in front of computers and are filling out their own federally facilitated marketplace applications during the presentation, then this would be considered facilitating enrollment in the marketplace and the presenter would have to be certified as an application counselor or a navigator by the federal government and be registered with the Tennessee Department of Commerce and Insurance.

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
Nashville, Tennessee

Navigator and Certified Application Counselor Registration Requirements

---

Frequently Asked Questions (FAQs #2)
Release Date: September 20, 2013

Q1: Where can an individual applicant for a navigator or certified application counselor registration find an application form?

A1: Applications for individual navigators and certified application counselors, as well as for navigator and certified application counselor entities are available under the News and Information tab of the Department of Commerce and Insurance website at http://www.tn.gov/insurance/index.shtml. Applications are also available on the Agent Resources page at http://www.tn.gov/insurance/agentsRes.shtml.

Q2: When can an applicant for a navigator or certified application counselor registration begin to offer navigator or certified application counselor assistance related to the federally facilitated marketplace?

A2: Completed applications must be e-mailed to ce.agent.licensing@tn.gov. An applicant for a navigator or certified application counselor registration will receive notification of receipt by the Tennessee Department of Commerce and Insurance and may offer navigator or certified application counselor assistance at that time.

Q3: How does a navigator or certified application counselor meet the fingerprinting and background check requirements under the Emergency Rules?

A3: The Department of Commerce and Insurance will conduct a Tennessee criminal history background check of a navigator or certified application counselor applicant upon receipt of his/her application. The Department of Commerce and Insurance will contact navigators and certified application counselors regarding fingerprinting procedures for national criminal history background reviews.

A navigator or certified application counselor may continue to offer assistance unless otherwise directed by the Department of Commerce and Insurance.

Downloaded from: http://nashvillepublicradio.org/blog/2013/09/24/in-rush-to-get-obamacare-underway-tennessee-backs-off-fingerprinting-recruiters/

WPLN News | September 24, 2013

In Rush To Get Obamacare Underway, Tennessee Backs Off Fingerprinting Recruiters

Navigators and certified application counselors will be helping Tennesseans enroll in the health insurance exchange, which is now named "The Marketplace." However, Tennessee is behind other states. The Navigators are still completing required federal training and have not begun outreach efforts.

Fingerprinting Obamacare health plan counselors is going to wait in Tennessee. The state's Department of Commerce and Insurance is backing off the requirement, saying there's no time to run checks through the system.

The agency issued "emergency rules" late last week that mandated federal background checks, sending fingerprints to the FBI, which can – in some cases – take months. It was seen by some health care advocates as an effort to impede enrollment in the health exchange set to launch October 1st.

However, the department of Commerce and Insurance says it has no interest in standing in the way of Obamacare and that a basic background check will have to do for now.

"We will eventually be getting all those fingerprints," spokesperson Kate Abernathy said. "But we won't be forcing them to get something done within a couple of days which is unreasonable."

There are two levels of Obamacare outreach workers affected. The Navigators are directly funded by federal grants, and certified application counselors get federal training but might work for another non-profit or even hospital. Both could end up handling sensitive information like Social Security numbers, tax returns and health histories.

Like other Republican-led legislatures, the Tennessee General Assembly passed a law requiring additional background checks. But the Navigators – themselves – say the state agencies have been "responsive."

"I have not perceived political issues," says Kathy Wood-Dobbins, CEO of the Tennessee Primary Care Association, which will oversee 10 Navigators. "I think that there has been a real effort to protect the public."

While those with federal training do need a background check, state regulators say anyone at a church or library can give advice to someone needing help with insurance, so long as they're not handling that person's confidential information.

Tags: health exchange, Navigators, Obamacare

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
Insurance Division – Agent Licensing
500 James Robertson Parkway
Nashville, TN 37243-1134
Fax: 615 532-2862 615 741-2693 ce.agent.licensing@tn.gov

REGISTRATION REQUIREMENTS FOR NAVIGATOR (ENTITY) or CERTIFIED APPLICATION COUNSELOR ORGANIZATION

An entity that acts as a Navigator or Certified Application Counselor Organization, supervises or is responsible for the activities of Individual Certified Application Counselors or individual navigators or receives funding to perform such activities shall obtain an entity navigator or certified application counselor registration in TN.

"**Navigator**" - any individual or entity, other than an insurance producer licensed pursuant to Tennessee Code Annotated Title 56, who:

(a) Receives any funding, directly or indirectly, from an exchange, the state, or the Federal Government to perform any of the activities and duties identified in 42 U.S.C. 1803(i);
(b) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;
(c) Conducts public education or consumer assistance activities for or on behalf of an exchange; or
(d) Is described or designated by an exchange, the state, or the United States Department of Health and Human Services, or could reasonably be described or designated as, navigators, "non-Navigator assistance personnel" or "in-person assistance personnel".

"**Certified Application Counselor Organization**"- any organization, including an organization designated as a Medicaid certified application counselor organization by a state Medicaid or CHIP agency, designated by the exchange to certify its staff members or volunteers to act as certified application counselors

Application Procedure

Complete and sign the Entity Application for Navigator or Certified Application Counselor Organization

Quarterly Requirement

Entities registered as Navigators or Certified Application Counselors must provide a list of all individual Navigators and Certified Application Counselors that it employs, supervises or is affiliated with on a quarterly basis.

1. January – March, due by April 10
2. April – June, due by July 10
3. July – September, due by October 10
4. October – December, due by January 10

Renewal

Navigator Entity and Certified Application Counselor Organization Entity shall renew annually. Submit a completed signed renewal form.

Appendix 7

State of Tennessee
Department of Commerce and Insurance
Agent Licensing Section
500 James Robertson Parkway
Nashville, TN 37243-1134

ENTITY REGISTRATION APPLICATION for

NAVIGATOR or
CERTIFIED APPLICATION COUNSELOR ORGANIZATION

Check appropriate box for registration requested.

- ❑ Navigator (Entity)
- ❑ Certified Application Counselor Organization (Entity)

Entity Name			Incorporation/Formation Date		FEIN -
Entity Contact Name		Phone Number			E-mail Address
List any other assumed, alias or trade names under which you are doing business or intend to do business.			State of Domicile		Federal Certification Number
Entity Business Address		City	State	Zip Code	
Phone Number ( ) -	Fax Number ( ) -	Business Web Site Address		Business E-Mail Address	
Entity Mailing Address	P.O. Box	City	State	Zip Code	

Designated Individual registered as a Navigator or Certified Application Counselor to be responsible for the entity's compliance with TN regulations

Identify at least one Designated Registered Navigator or Certified Application Counselor

Name _____ SSN ___ - ___ - ___

Name _____ SSN ___ - ___ - ___

Name _____ SSN ___ - ___ - ___

Name _____ SSN ___ - ___ - ___

Please read the following very carefully and answer every question. All copies must be certified. All written statements submitted by the Applicant must include an original signature.

1. Has the entity or any owner, partner, officer or director ever been convicted of, or is the entity or any owner, partner, officer or director currently charged with, committing a crime, whether or not adjudication was withheld? Yes ___ No___

   "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendre, or having been given probation, a suspended sentence or a fine.

   If you answer yes, you must attach to this application:
   a) a written statement explaining the circumstances of each incident,
   b) a certified copy of the charging document, and
   c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment

2. Has the entity or any owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license? Yes ___ No___

   "Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

   If you answer yes, you must attach to this application:
   a) a written statement identifying the type of license and explaining the circumstances of each incident,
   b) a certified copy of the Notice of Hearing or other document that states the charges and allegations, and
   c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

3. Has any demand been made or judgment rendered against the s entity or any owner, partner, officer or director for overdue monies or ever been subject to a bankruptcy proceeding? Yes ___ No___

   If you answer yes, submit a statement summarizing the details of the indebtedness and arrangements for repayment.

4. Has the entity or any owner, partner, officer or director ever been notified by any jurisdiction of any delinquent tax obligation that is not the subject of a repayment agreement? Yes ___ No___

   If you answer yes, identify the jurisdiction(s): _____

5. Is the entity or any owner, partner, officer or director a party to, or ever been found liable in any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty? Yes ___ No___

   If you answer yes, you must attach to this application:
   a) a written statement summarizing the details of each incident,
   b) a certified copy of the Petition, Complaint or other document that commenced the lawsuit or arbitration, and
   c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

6. Has the entity or any owner, partner, officer or director ever had any business relationship terminated for any alleged misconduct? Yes ___ No___

   If you answer yes, you must attach to this application:
   a) a written statement summarizing the details of each incident and explaining why you feel this incident should not prevent you from receiving registration, and
   b) certified copies of all relevant documents.

Applicants Certification and Attestation

The undersigned owner, partner, officer or director of the entity hereby certifies, under penalty of perjury, that:

1. All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for registration revocation and may subject me and the entity to civil or criminal penalties.
2. The entity grants permission to the Commissioner to verify any information supplied with any federal, state or local government agency, current or former employer.
3. Every owner, partner, officer or director of the entity either a) does not have a current child-support obligation, or b) has a child-support obligation and is currently in compliance with that obligation.
4. I authorize the jurisdiction to give any information they may have concerning me to any federal, state or municipal agency, or any other organization and I release the jurisdiction and any person acting on their behalf from any and all liability of whatever nature by reason of furnishing such information.
5. I acknowledge that I understand and comply with the laws and regulations of the State of Tennessee to which I am applying for registration.

Must be signed by an officer, director, principal or Partner of the entity:

Month Day Year

Signature

Typed or Printed Name

Title

Social Security Number

Address

City State Zip

*Entities registered as Navigators or Certified Application Counselors must provide a list of all individual Navigators and Certified Application Counselors that it employs, supervises or is affiliated with INITIAL APPLICATION and on a QUARTERLY BASIS thereafter.

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
Insurance Division – Agent Licensing
500 James Robertson Parkway
Nashville, TN 37243-1134
Fax: 615 532-2862 615 741-2693 ce.agent.licensing@tn.gov

REGISTRATION REQUIREMENTS FOR NAVIGATOR or CERTIFIED APPLICATION COUNSELOR

No person shall act as, offer to act as, or advertise any service as a Navigator or a Certified Application Counselor in this state unless the individual is registered with the Commissioner of Insurance.

"**Navigator**" - any individual or entity, other than an insurance producer licensed pursuant to Tennessee Code Annotated Title 56, who:

(a) Receives any funding, directly or indirectly, from an exchange, the state, or the Federal Government to perform any of the activities and duties identified in 42 U.S.C. 1803(i);
(b) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;
(c) Conducts public education or consumer assistance activities for or on behalf of an exchange; or
(d) Is described or designated by an exchange, the state, or the United States Department of Health and Human Services, or could reasonably be described or designated as, navigators, "non-Navigator assistance personnel" or "in-person assistance personnel".

"**Certified Application Counselor**" - any employee or volunteer of a certified counselor organization that enters into an agreement with the Exchange to have its employees or volunteers:

(a) Provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible;
(b) Assist individuals and employees to apply for coverage in a QHP through the Exchange and for insurance affordability programs; and
(c) Help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs.

General Requirements

1. The applicant is at least eighteen (18) years of age
2. The applicant maintains his or her principal place of business in Tennessee
3. The applicant has not committed any act that is grounds for denial, suspension or revocation of a license or registration
4. The applicant has not had an insurance producer license, a navigator registration, or an equivalent license or certification denied, suspended or revoked in any state, province, district or territory
5. The applicant has successfully passed the Federal Training Program for Navigator or Certified Application Counselor
6. The applicant has successfully completed a Tennessee background check and will submit to a fingerprint based background check when notified of availability by the Department of Commerce and Insurance.

7. The applicant is trustworthy, reliable and of good reputation
8. The applicant has identified the entity with which the individual is affiliated and supervised.
9. The applicant has completed and signed the Application for Navigator or Certified Application Counselor

Renewal

Navigator and Certified Application Counselor registrations shall renew annually.

1. The Navigator or Certified Application Counselor must submit a completed and signed renewal form
2. The Navigator or Certified Application Counselor must have successfully completed 12 hours of continuing education approved by the Commissioner prior to renewal date

Continuing Education

An individual who holds a Navigator or Certified Application Counselor registration shall satisfactorily complete a minimum of twelve (12) hours of continuing education courses approved by the Commissioner on an annual basis before renewal.

Any failure to fulfill the ongoing continuing education requirements shall result in the expiration of the registration. Individual Navigators and Certified Application Counselors whose registration has expired for failing to complete the continuing education requirements may not reapply until they have provided satisfactory proof to the Commissioner that they have completed the required continuing education requirements.

State of Tennessee

REGISTRATION APPLICATION for NAVIGATOR or CERTIFIED APPLICATION COUNSELOR

(Print or Type)

Check appropriate box for registration requested.

- ❑ Navigator (Individual)
- ❑ Certified Application Counselor (Individual)

Soc. Security Number - -		Federal Certification Number (Attach Copy of Federal Certification)			
Last Name JR./SR. etc		First Name	Middle Name	Date of Birth (month) ___ (day) ___ (year)____	
Residence/Home Address (Physical Street)	P.O. Box	City	State	Zip Code	
Home Phone Number ( ) -	Gender (Circle One) Male Female	Are you a Citizen of the United States? (Check One) Yes ☐ No ☐ (If No, of which country are you a citizen?) (If No, you must supply proof of eligibility to work in the U.S.)			
Business Entity Name					
Business Entity Address	P.O. Box	City	State	Zip Code	
Business Phone Number ( ) -	Business Fax Number ( ) -	Business E-Mail Address	Business Web Site Address		
Applicant's Mailing Address	P.O. Box	City	State	Zip Code	

a. List any other assumed, fictitious, alias, maiden or trade names under which you have used in the past to do business.

b. List any trade names under which you are currently doing business or intend to do business.

Entity Affiliation

List your Entity Affiliation:

Entity Name:_____

Address_____

Employment History

Account for all time for the past five years. Give all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education.

			From Month	From Year	To Month	To Year	Position Held
Name							
City	State	Foreign Country					
Name							
City	State	Foreign Country					
Name							
City	State	Foreign Country					
Name							
City	State	Foreign Country					

The Applicant must read the following very carefully and answer every question. All copies of documents must be certified. All written statements submitted by the Applicant must include an original signature.

Background Information

1. Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld? Yes ___ No___

"Crime" includes a misdemeanor , felony or a military offense. You may exclude misdemeanor traffic citations and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendre, or having been given probation, a suspended sentence or a fine.

If you have a felony conviction, have you applied for a waiver as required by 18 USC 1033? N/A_____ Yes_____ No _____

If so, was that waiver granted? (Attach copy of 1033 waiver approved by home state.) N/A _____ Yes ____ No _____

If you answer yes, you must attach to this application:

a) a written statement explaining the circumstances of each incident,
b) a certified copy of the charging document, and
c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

2. Have you or any business in which you are or were an owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license? Yes ___ No___

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial

If you answer yes, you must attach to this application:

a) a written statement identifying the type of license and explaining the circumstances of each incident,
b) a certified copy of the Notice of Hearing or other document that states the charges and allegations, and
c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

3. Has any demand been made or judgment rendered against you for overdue monies , or have you ever been subject to a bankruptcy proceeding? Only include individual bankruptcies that involve funds held on behalf of others. Yes ___ No___

If you answer yes, submit a statement summarizing the details of the indebtedness and arrangements for repayment, and/or type and location of bankruptcy.

4. Have you been notified by any jurisdiction of any delinquent tax obligation that is not the subject of a repayment agreement? Yes ___ No___

If you answer yes, identify the jurisdiction(s): _____

5. Are you currently a party to, or have you ever been found liable in, any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty? Yes ___ No___

If you answer yes, you must attach to this application:

a) a written statement summarizing the details of each incident,
b) a certified copy of the Petition, Complaint or other document that commenced the lawsuit or arbitration, and
c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

6. Have you or any business in which you are or were an owner, partner, officer or director ever had a business relationship terminated for any alleged misconduct? Yes ___ No___

If you answer yes, you must attach to this application:

a) a written statement summarizing the details of each incident and explaining why you feel this incident should not prevent you from receiving an insurance license, and
b) certified copies of all relevant documents.

7. Do you have a child support obligation in arrearage that is currently subject to a repayment agreement or are you subject to a child support related subpoena/warrant? Yes ___ No___

If you answer yes to Question 7, by how many months are you in arrearage? _____ Months

Applicants Certification and Attestation

The Applicant must read the following very carefully:

1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for registration revocation or denial of the registration and may subject me to civil or criminal penalties.
2. The Applicant grants permission to the Commissioner to verify any information supplied with any federal, state or local government agency, current or former employer.
3. I authorize the jurisdiction to give any information they may have concerning me to any federal, state or municipal agency, or any other organization and I release the jurisdiction and any person acting on their behalf from any and all liability of whatever nature by reason of furnishing such information.
4. I acknowledge that I understand and comply with the laws and regulations of the State of Tennessee to which I am applying for registration.

_____ _____

Month Day Year Original Applicant Signature

_____

Full Legal Name (Printed or Typed)

Attachments

The following attachments must accompany the application otherwise the application may be returned unprocessed or considered deficient.

1. Applicants who are non-citizens must provide two forms of documentation of identity and immigration status.
2. Proof of successfully passing the Federal Training Program
3. Approval Certification by Federal Government to act as a Navigator/Certified Application Counselor